United States Court of Appeals

for the Second Circuit

APPENDIX

ORIG

76-1129

B
P/S

United States Court of Appeals
For the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

v.

CHARLES INDIVIGLIA,

Appellant.

Appellant's Appendix

ARNOLD E. WALLACH
Attorney for Appellant
Charles Indiviglia
11 Park Place
New York, N.Y.
Tel. (212) 227-0959

JUN 22 1976

DICK BAILEY PRINTERS, 290 Richmond Ave., Staten Island, N.Y. 10302
Tel. (212) 447-5358

TABLE OF CONTENTS

	Page
Docket Entries	1
Indictment	4
Judgment and Commitment	13
Excerpts from Testimony	
Rossi-direct	A1 - A129
Rossi-cross	A132-A207
Rossi-redirect	A238-A244,A262-263
Rossi-recross	A250-A261
Ferrarone-direct	A264-A274
Ferrarone-cross	A275-A279
Pearson-direct	A280-A308
Gerbino-direct	A309-A319
Crovetti-direct	A320-A322
Mengrone-direct	A324-A394
Mengrone-cross	A395-A401
Alleva-direct	A403
Court's Charge	A422-A458

PAGINATION AS IN ORIGINAL COPY

BEST COPY AVAILABLE

DOCKET ENTRIES

UNITED STATES DISTRICT COURT
JUDGE LASKER

- - - - - - - - - - - - - - - - - - - X

THE UNITED STATES

vs.

CHARLES INDIVIGLIA

- - - - - - - - - - - - - - - - - - - X

4/23/75 - Filed indictment and ordered sealed. Pierce J. B/W ordered.

5/23/75 - Anthony Spitalieri - Court fixes bail in the amount of $25,000. cash or surety in the event that he is apprehended in Ohio or outside the jurisdiction of the SDNY Pierce, J.

5/29/75 - Charles Indiviglia (atty. present) Pleads not guilt. Bail fixed at $50,000. P.R.B. secured by house owned by brother and sister of deft. Bond to be co-signed by same.

Filed P.R.B. w/out security in the sum of $50,000. Bond secured by deed to house at 2538 Bronxwood Ave., Bx. NY and bank book No. MA 75826, Manufacturers Trust Co. CLERK.

Filed Notice of Appearance of Atty. Robert L. Ellis, 17 East 63rd Street, NYC 10021 Tel - 838-2323.

REMAND issued 5-30-75.

Filed Govt's Notice of Readiness for Trial on or after 8-1-75.

11/18/75 - Filed Memorandum No. 43408 - Nine of the twelve defendants have filed an array of motions on such disparate

subjects as severance, discovery, bills of particulars, dismissal of the Indictment , limitations of the government's proof and other matters. *** The motions are granted to the extent specified or consented to by the government and are otherwise DENIED - LASKER, J. (m/n's 11-21-75).

Filed 2nd Offender Information.

Filed affidavit by defendant in support of application to remain at liberty pending sentencing under the conditions of bail as set on the 5/30/75 by Judge Gagliardi.

Defendant Charles Indiviglia present, with atty. Albert Brachley and Robert Blossner.

Trial.

Charles Indiviglia found "Guilty" on Cts. 1 & 2 Bail continued as before in amount of $50,000 PRB defendant to report every week to U.S. Marshal Office. Sentence set for 3/5/76 9:45 a.m. States that he has no further cash reserves.

Charles Indiviglia, et al. Filed Order that defendants PRB are extended to include the State of Florida & extended from 2/11/76 through 2/22/76 and the PRB are extended to include the Eastern Dist. of N.Y. on a permanent basis; except for said provisions the defendant shall abide with all the terms and provisions of his PRB executed on 5/30/75; and defendant return to the SDNY and appear within 24 hours of the receipt of his attorney, etc. Lasker J. (mailed notice)

Filed Transcript of proceedings dated Jan. 5, 6, 12, 1976.

Filed Transcript of proceedings dtd. Jan. 13, 14, 15, 19, 1976.

Filed Transcript of proceedings dtd. Jan. 20, 21, 22, 23, 1976.

March 9, 1976

Defendant Charles Indiviglia pres.

Defendant's atty. Albert Brachley pres.

FIVE (5) YEARS on Count 1 and upon the expiration of the term of custody the defendant shall serve a SIX (6) YEAR period of Special Parole in accordance with the provisions of Title 21 USC Section 841(b).

and

on Count 2 the imposition of sentence of imprisonment is suspended and the defendant is placed on probation for a period of FIVE (5) YEARS, the term of which is not stayed and shall commence at this time. The sentence of imprisonment hereinabove imposed is subject to the provisions of Title 28, USC Sec. 4208(a)(2).

INDICTMENT

- - - - - - - - X

SAME TITLE

- - - - - - - - X

COUNT ONE

The Grand Jury charges:

1. From on or about the 1st day of January, 1971 and continuously thereafter up to and including the 30th day of December, 1973, in the Southern District of New York, ANTHONY RICCO, a/k/a Tony Bragiole, ANGELO RICCO, CHARLES INDIVIGLIA, a/k/a Charlie Poops, JAMES RIZZIERI, MICHAEL PUGLISI, a/k/a Mike Siciliano, JOHN DISALVO, a/k/a Johnny Babear, ANTHONY ZINZI, WILLARD WILLIAMS, a/k/a Trees, SAINT JULIAN HARRISON, a/k/a Harry, GEORGE CORRADO, ANTHONY SPITALIERI, a/k/a Tony Spits, a/k/a Tony from Cleveland, and FREDDIE BLASE, the defendants, and others to the Grand Jury known and unknown, including Albert Rossi, Gary Pearson, Peter Mengrone, named herein as co-conspirators but not as defendants, and others, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841 (b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact amount

Sects. 812, 841(a)(1) and 841(b)(1)(A) of Title 21 United States Code.)

OVERT ACTS

In pursuance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. In or about September, 1971, defendant FREDDIE BLASE met co-conspirator Albert Rossi in the Bronx, New York.

2. In or about October and November, 1971, defendant ANGELO RICCO delivered ounces of heroin to defendant FREDDIE BLASE and co-conspirator Albert Rossi at the Chester House, the Rosedale Avenue Social Club, and elsewhere in the Bronx, New York.

3. In or about March and April, 1972, defendant ANGELO RICCO delivered ounces of heroin to defendant FREDDIE BLASE and co-conspirator Albert Rossi at a seafood restaurant, City Island, Bronx, New York.

4. In or about March and April, 1972 defendant GEORGE CORRADO purchased heroin from co-conspirator Albert Rossi at an apartment on Williamsbridge Road, Bronx, New York for resale to others.

5. In or about August, 1972 in the Bronx, New York, defendant JAMES RIZZIERI met with co-conspirator Albert Rossi and negotiated to sell heroin.

6. In or about September, 1972, defendants ANTHONY RICCO, a/k/a Tony Bragiole, and ANGELO RICCO met with defendant

JAMES RIZZIERI and co-conspirator Albert Rossi at the Magic Carpet, Bronx, New York and discussed the sale of large quantities of heroin.

Defendants Anthony Ricco, a/k/a Tony Bragiole, and ANTHONY RICCO delivered two kilograms of hercin in the vicinity of the Magic Carpet, Bronx, New York for defendant JAMES RIZZIERI and co-conspirator Albert Rossi.

8. In or about November or December, 1972 defendant JOHN DISALVO, a/k/a Johnny Babear, met with co-conspirator Albert Rossi at the Magic Carpet, Bronx, New York and negotiated to purchase 1/8 kilogram of heroin.

9. In or about November, 1972 defendant JAMES RIZZIERI delivered approximately one-half kilogram of heroin to another in the vicinity of Hugh Grant Circle, Bronx, New York.

10. In or about March, 1973 defendant ANTHONY ZINZI met with co-conspirator Albert Rossi at the Hi Hat, Bronx, New York and discussed the sale of 1/8 kilogram of cocaine.

11. In or about February or March, 1973, defendant ANTHONY SPITALIERI, a/k/a Tony Spits, a/k/a Tony from Cleveland purchased approximately 1/4 kilogram of cocaine from co-conspirator Albert Rossi in the vicinity of 2007 Narragansett Avenue, Bronx, New York.

12. In or about March, 1973 defendant WILLARD WILLIAMS, a/k/a Trees, purchased 1/8 kilogram of cocaine from co-conspirator Albert Rossi at 92nd Street, New York, New York.

13. In or about April and May, 1973 defendants WILLARD WILLIAMS, a/k/a Trees and SAINT JULIAN HARRISON, a/k/a had meetings in the Cellar Bar, New York, New York, and elsewhere with co-conspirator Albert Rossi and others and discussed the sale of 50 kilograms of heroin to co-conspirator Frank Matthews.

14. ***

a/k/a Tony Bragiole, met with co-conspirator Albert Rossi at a car-wash in the Bronx, New York and discussed supplying 50 kilograms of heroin.

15. In May, 1973 defendants WILLARD WILLIAMS, a/k/a Trees, and SAINT JULIAN HARRISON, a/k/a Harry, and others, delivered $350,000 to co-conspirator Albert Rossi in the vicinity of 2007 Narragansett Avenue, Bronx, New York.

16. In or about May, 1973 defendant JOHN DISALVO a/k/a Johnny Babear, sold 1/8 kilogram of heroin to co-conspirator Jerry Rubin in the Bronx, New York.

17. In or about June, 1973 defendant ANTHONY ZINZI met with co-conspirator Peter Mengrone at Empire Ford, Mount Vernon, New York and negotiated to sell cocaine and heroin to co-conspirator Peter Mengrone.

18. In or about June, 1973 defendant MICHAEL PUGLISI, a/k/a Mike Siciliano, delivered cocaine to co-conspirator Gary Pearsen in the Bronx, New York.

19. In or about August, 1973 defendant WILLARD WILLIAMS, a/k/a Trees, purchased approximately 1/2 kilogram of cocaine

from co-conspirator Gary Pearson at Empire Ford, Mount Vernon, New York.

20. In or about August, 1973 defendant ANTHONY SPITALIERI, a/k/a Tony from Cleveland, purchased approximately 1/4 kilogram of cocaine from co-conspirator Peter Mengrone in the vicinity of the Raceway Diner, Yonkers Avenue, Yonkers, New York.

21. In or about September, 1973, CHARLES INDIVIGLIA, a/k/a Charlie Poops, purchased approximately 1/4 kilogram of heroin from defendant ANTHONY RICCO,a/k/a Tony Bragiole in the vicinity of the Magic Carpet, Bronx, New York.

22. In October, 1973 defendant ANTHONY RICCO, a/k/a Tony Bragiole, met with co-conspirator Peter Mengrone and another at the Magic Carpet, Bronx, New York, and negotiated to sell 3 kilograms of heroin.

(Title 21, United States Code, Section 846)

COUNT TWO

The Grand Jury further charges:

In or about August or September, 1972 in the Southern District of New York,

ANGELO RICCO, and
CHARLES INDIVIGLIA, a/k/a Charlie Poops,

the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 1 kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT THREE

The Grand Jury further charges:

In or about October or November, 1972 in the Southern District of New York,

GEORGE CORRADO,

the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 1/8 kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT FOUR

The Grand Jury further charges:

On or about the 22nd day of November, 1972 in the Southern District of New York,

ANTHONY RICCO, a/k/a Tony Bragiole,
ANGELO RICCO, and
JAMES RIZZIERI,

the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 461.9 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT FIVE

The Grand Jury further charges:

In or about November or December, 1972 in the Southern District of New York,

ANTHONY RICCO, a/k/a Tony Bragiole,

ANGELO RICCO, and
JAMES RIZZIERI,

the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 2 kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT SIX

The Grand Jury further charges:

In or about May, 1973, in the Southern District of New York, JOHN DISALVO, a/k/a Johnny Babear, the defendant, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 1/8 kilogram of heroin.

(Title 21, United States Code, Sections 812 841(a)(1) and 841(b)(1)(A).)

COUNT SEVEN

The Grand Jury further charges:

In or about May or June, 1973, in the Southern District of New York, ANTHONY RICCO, a/k/a Tony Bragiole, and ANGELO RICCO, the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 1 kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT EIGHT

The Grand Jury further charges:

In or about July or August, 1973, in the Southern District of New York, MICHAEL PUGLISI, a/k/a Mike Siciliano, the defendant, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 1 kilogram of cocaine.

(Title 21, United States, Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT NINE

The Grand Jury further charges:

In or about August, 1973 in the Southern District of New York, ANTHONY SPITALIERI, a/k/a Tony Spits, a/k/a Tony from Cleveland, the defendant, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 1/4 kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT TEN

The Grand Jury further charges:

In or about August, 1973 in the Southern District of New York, WILLARD WILLIAMS, a/k/a Trees, the defendant, unlawfully, wilfully and knowingly did distribute and

possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 1/2 kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT ELEVEN

The Grand Jury further charges?

In or about October, 1973 in the Southern District of New York, ANTHONY RICCO, a/k/a Tony Bragiole, and ANGELO RICCO, the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 3 kilograms of heroin.

(Title 21, United States Code, Sections 812 841(a)(1) and 841(b)(1)(A).)

s.Irving J. Bard
Foreman

s. Paul J. Curran
United States Attorney

[CERTIFIED A TRUE COPY
RAYMOND F. BURGHARD, Clerk

by M.G.
Deputy Clerk

JUDGMENT AND COMMITMENT

[TITLE]

There being a finding/verdict of guilty.

Defendant has been convicted as charged of the offenses of

Conspiracy to Violate Federal Drug Laws -- Title 21, U.S.C. Sec. 846 (Count 1)

Distribution & Possession with Intent to Distribute Heroin Title 21, U.S.C. Sec. 813, 841(a)(1) & 841(b)(1)(A) (Count 2)

* * * * * * *

The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE (5) YEARS on Count 1 and upon the expiration of the term of custody the defendant shall serve a SIX (6) YEAR period of Special Parole in accordance with the provisions of Title 21, U.S.C. Sec. 841(b).

and

on Count 2 the imposition of sentence of imprisonment is suspended and the defendant is placed on probation for a period of FIVE (5) YEARS, the term of which is not stayed and shall commence at this time. The sentence of imprisonment hereinabove imposed is subject to the provisions of Title 28, U.S.C. Sec. 4208(a)(2).

* * * *

s. Morris E. Lasker, U.S. D.J.

Date 3/5/76

(In open court; jury present.)

MR. MITCHELL: Your Honor, is it possible to have the witness move a little bit to the right without falling?

MR. AMOROSA: The Government calls Albert Rossi.

A L B E R T R O S S I, called as a witness by the Government, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. AMOROSA:

Q Mr.Rossi, would you keep your voice up so everyone can hear you in the courtroom.

How many times have you bought and sold narcotics in your life, Mr. Rossi?

MR. JACOBS: Objection.

THE COURT: Overruled.

Q How many times have you bought and sold narcotics in your life?

A Numerous.

Q January of 1975, did you plead guilty to a Federal narcotics offense?

A I did.

Q Have you been sentenced?

A No, sir.

Q What prison term do you face?

A Maximum of 15 years in jail and a $25,000 fine.

Q About March of 1975, did you plead guilty to a Bronx County New York narcotics offense?

A I did.

Q Have you been sentenced?

A I have not.

Q How much time do you face in theBronx?

A Maximum of 15 years.

Q Have you been advised that at the specific request of the United States Attorney's office in the Southern District of New York, your sentence in the Bronx has been adjourned pending your cooperation?

A I have.

MR. GOLDBERGER: I will object to the leading. Can he just ask Mr. Rossi questions without leading him into what the answer will be.

THE COURT: Of course the questions are normally undesirable, but this saves time and the material brought out is favorable to the defendants, not adverse to them, so the objection in this case is overruled.

Q Are you also, Mr. Rossi, currently under indict-

ment by the special narcotics prosecutor in Manhattan for an A-1 felony?

A I am.

Q Relating to narcotics charges?

A Yes.

Q Have you pleaded guilty to that indictment?

A I have not.

Q How much time do you face there?

A A minimum of 15 to life and a maximum of 25 to life.

Q When were you initially arrested in connection with your narcotics offenses, Mr. Rossi?

A January 24, 1974.

Q By whom were you arrested at that time?

A Special narcotics prosecutor's office.

Q What is your bail situation, Mr. Rossi, in the Bronx?

A Released on my own personal recognizance.

Q What is your Federal bail situation?

A Released on my own personal recognizance.

Q What is your special narcotics prosecution bail situation?

A Released on my personal recognizance.

Q Where do you reside?

A Somewhere in the United States.

Q You said you were arrested in January of 1974. When were you released from custody for the first time?

A Somewhere at the end of August, 1975.

Q Where were you in custody from January 1974 through August, 1975?

A For the first two or three months I was in custody in the Manhattan House of Detention known as the Tombs, then I was taken out on a writ of habeas corpus and taken into Federal custody.

Q So it would be accurate to say from approximately March of 1974 through August of 1975 or thereabouts, you were in Federal custody?

MR. GOLDBERGER: Objection. His recollection of events and times and dates in this case is going to be very important and I would ask the Court to allow him to say where he was and when he was.

THE COURT: I will sustain you on that point. Put the question in a non-leading way.

Q When, Mr. Rossi, were you in State custody following your arrest?

THE COURT: State custody?

Q As opposed to Federal custody.

A January of 1974, February of '74 and about the

third week in March of 1974, I believe.

Q When were you in Federal custody?

A From about the thir d week of March, the last week of March up to August, 1975, until my release.

Q What was your bail situation in the beginning of August 1975 in special narcotics court in Manhattan?

A No bail.

Q Did you make an application in August of 1975 to have your bail reduced?

A I did.

Q Was your applicatcn opposed by the special narcotics prosecutor or by the United States Attorney?

A No, sir, it was not.

Q What was the result of your application for bail at that time?

A I was released on my own personal recognizance.

THE COURT: That means you didn't have to put up any money, is that right?

THE WITNESS: No, your Honor.

Q And you currently reside some place in the United States?

MR. JACOBS: Objection. Asked and answered.

THE COURT: Overruled.

A I do.

Q Mr. Rossi, when did you begin to cooperate with law enforcement authorities in connection with this case? If you can give us an exact date, give it to us. If you can't, give us your best recollection as to the approximate time.

A Somewhere in April of 1974.

Q How old are you, Mr. Rossi?

A Thirty years old.

Q Where did you grow up?

A The Bronx and Harlem.

Q How far did you go in high school?

A My senior year.

Q Did you graduate?

A I did not.

Q Did you serve in the Armed Forces?

A I did.

Q What branch?

A The Marine Corps.

Q Did you enlist in the Marine Corps or were you drafted?

A I enlisted.

Q When did you enlist?

A The end of 1963, the beginning of 1964.

Q When were you discharged?

A Somewhere in 1966.

Q What kind of discharge did you receive?

A Honorable.

Q Were there any medical conditions attached to the discharge?

A There was.

Q What were they?

A 75 per cent for nerves and 25 per cent for gunshot wounds.

Q Where did you get the gunshot wounds?

A South Vietnam.

Q Who shot you?

A A sniper.

MR. JACOBS: Objection.

THE COURT: Sustained.

Q Are you then on 100 per cent disability?

A I am.

Q In 1966, were you arrested in Queens for felonious assault?

A I was.

Q WEre you convicted?

A I was not.

Q What happened to the charge?

A Dismissed.

Q In 1967, October, thereabouts, were you arrested in Manhattan for felonious assault?

A I was.

Q In connection with that charge, were you examined by a psychiatrist at Bellevue Hospital?

A I was.

Q Did he find you competent to stand trial or incompetent to stand trial.

A He found me competent to stand trial.

Q Did you subsequently plead guilty to that charge?

A I did.

Q What was the sentence?

A Five years probation.

Q Februavy 5, 1969 or thereabouts, were you arrested in Trenton, New Jersey, for uttering a forged money order?

A I was.

Q Did you plead to a misdemeanor in that case?

A I did.

Q WEre you sentenced?

A I was.

Q What was your sentence?

A $150 fine.

Q On August 31, 1972 or thereabouts, were you arrested in the Bronx and charged with the attempted murder of Curtis Burton?

A I was.

Q What happened to that charge?

A Dismissed.

Q Did you personally shoot Burton?

A I did not.

Q Were you present when someone shot him?

A I was.

Q Did you assist that someone who shot Burton?

A I did.

Q Were you with others at that time in addition to the person who shot Burton?

A I was.

Q Was Burton a narcotics dealer?

A He was.

Q Have you revealed the names of those others in addition to the one who shot Burton to the representative of the Government?

MR. MITCHELL: I will object to this, your Honor.

THE COURT: Overruled as to this question.

Q Have you revealed the names of the people who

were with you, including the person who shot Burton, to representatives of the Government?

A I did.

Q On March 14,1973, were you arrested in Lodi, New Jersey --

MR. MITCHELL: Y our Honor, I will object to him giving dates. The recollection of this witness is of paramount importance.

THE COURT: Do you want to ask next then, were you arrested in Lodi and ask hi: when?

Q WEre you arrested in Lodi, New Jersey, in 1973 some time?

A I was.

Q Do you recall when in 1973 you were arrested in Lodi?

A Around March, I believe,

Q Were you charged with possession of amphetamines and a weapon?

A I was.

Q What was the result of that charge?

A It is still pending.

End 2A3

6/76
2b

Q 1972 and 1973, did you frequently carry firearms?

A I did.

Q Did there come a time in 1973 that you were arrested by the Nyack, New York police and charged with possession of dangerous drugs?

A Yes.

Q When in 1973 was that charge, Mr. Rossi?

A I believe it was July 9th.

Q What happened to that charge?

A I pled guilty to a misdemeanor.

Q Were you sentenced?

A I was fined $250.

Q Over the course of your life, Mr. Rossi, have you committed crimes for which you were never arrested?

A Yes.

Q Have you informed my office of those crimes?

A I did.

Q In 1967, did you shoot and wound Richard Woo?

MR. JACOBS: Objection. Nothing to do with this case.

THE COURT: Overruled.

Q In 1967, Mr. Rossi, did you shoot and wound Richard Woo?

A I did.

2 rkmch Rossi-direct

Q Did you attempt to kill him?

A I did not.

Q In 1973, did you attempt to kill --

MR. GOLDBERGER: Judge, I have to object. He can ask him what he did and let him give us the dates. The dates are important in this case, Judge, they really are.

THE COURT: I agree, Mr. Amorosa. Please stop asking in terms of dates. Please ask whether he ever did so and ask him when.

Q Did there come a time when you attempted to kill a person by the name of Salvatore Ripulone?

A I did.

Q Did you attempt to kill him on one occasion or more than one occasion?

A More than one occasion.

Q On how many occasions did you attempt to kill Salvatore Ripulone?

A Two.

Q When did you attempt to kill Salvatore Ripulone?

A In the summer of 1973.

Q On both occasions?

A No.

Q Was that the first occasion?

A Yes.

Q When was the second occasion?

A Somewhere around September, October, 1973.

Q Was Salvatore Ripulone at the time a worker in narcotics for you?

A Yes, he was.

MR. GOLDBERGER: Objection as leading.

THE COURT: Sustained.

Q Did there come a time, Mr. Rossi, that you attempted to extort money from a person by the name of Peter Kelly?

A I did.

Q When was that?

A Sometime in 1972, to the best of my recollection.

Q Do you know more specifically than that when in 1972?

A In the winter.

Q Were others assisting you?

A They were.

Q Who was Peter Kelly in relationship --

THE COURT: Who was Peter Kelly?

Q Who was Peter Kelly?

A A narcotic customer.

Q Have you been advised by representatives of the Government that a man called Barry Lipsky has claimed that

Q Mr. Rossi, did there come a time you were involved in an armed robbery in the Riverdale section of the Bronx?

A I did.

Q When was that armed robbery?

A 1970 or 1971.

Q Was a woman wounded in that robbery by a bullet?

A I believe so.

Q Do you know who shot her?

A I do not remember.

Q Were others present at that time with you?

A Yes.

Q Were you arrested for that crime?

A I was not.

Q Who was the person who disclosed your involvement in that crime?

MR. JACOBS: Objection.

THE COURT: Overruled.

A Myself.

Q Did there come a time when you were involved in an armed robbery of a wholesale fruit stand known as "You Pick 'em, We Pack 'em"?

A Yes.

Q Where was that fruit stand?

A Kruger and Allington Avenue in the Bronx.

Q When was that armed robbery?

A Somewhere in 1971.

Q Were you arrested for that crime?

A I was not.

Q Who disclosed your involvement to the authorities?

A I did.

Q Were others with you?

A Yes.

Q Did there come a time when you were involved in yet another armed robbery of the Sealtest Milk Company in Queens?

A Yes.

Q When approximately was that, Mr. Rossi, unless you can tell us exactly?

A Around March of 1973.

Q Were you arrested for that crime?

A I was not.

Q Who disclosed your involvement to the authorities?

A I did.

Q Were you alone or with others during the commission of that crime?

A Others were with me.

Q Have you also claimed the kidnapping of a narcotics

for any crimes of violence you have committed?

A I was never told that.

Q Do you know you have been named in this indictment here as a co-conspirator and not as a defendant?

A I do.

Q Have you decided to cooperate with the Government in connection with your narcotics activities?

A Yes.

Q In return for your cooperation, Mr. Rossi, what promises have been made to you by representatives of the Government?

A That my cooperation would be brought to the attention of the sentencing judge, and that my involvement in other narcotics cases that I could give testimony in, that I would be a co-conspirator.

THE COURT: And not a defendant?

THE WITNESS: Yes, your Honor.

Q Apart from the ones you have already been indicted in?

A Yes.

Q Were those promises contingent on anything, Mr. Rossi?

A In that if I had to do another -- another promise was --

Q Just a minute. That is not what I am asking. You had better tell us the other promise.

A If I had to do time in jail, I would do time in a place I would be kept in protective custody.

Q Have you been told by my office, representatives of my office, Mr. Rossi, that we will make certain --

MR. JACOBS: Objection to leading.

THE COURT: Overruled.

Q -- that we will make certain, Mr. Rossi, that when you are sentenced in federal court or state court, the sentencing judges will be aware of each and every crime that you have admitted to that you have committed?

A Yes.

Q Have you received any money from the Government since you began to cooperate, Mr. Rossi?

A I have.

Q How much?

A Around 26, 27 hundred dollars.

Q What did you do with the money?

MR. MITCHELL: Objection.

THE COURT: Sustained.

Q Mr. Rossi, do you know a person by the name of Angelo Ricco?

A I do.

Q Have you seen him on more than one occasion in your life?

A I did.

Q Look around the courtroom and see if Angelo Ricco is here.

A He is.

Q Would you point him out, please?

A The gentleman with the blue tie on standing up.

MR. GOLDBERGER: We concede identification.

Q Do you know a person by the name of James Rizzieri?

A I do.

Q Did you see Mr. Rizzieri on more than one occasion in your life?

A I did.

Q Will you look around the courtroom, Mr. Rossi, and tell us whether you see Mr. Rizzieri here?

A I do.

Q Would you point him out?

A The gentleman with the green pen in his hand.

MR. AMOROSA: Identification conceded.

THE COURT: Yes.

Q Do you know a person named Fred Blase?

A Yes.

Q Have you seen Mr. Blase on more than one occasion

in your life?

A Yes.

Q Do you see him in the courtroom?

MR. RICHMAN: We will concede identification.

(Continued on next page)

/6/75
M 3a

Q Do you know a person by the name of Charles Indiviglia?

A I do.

Q Have you seen him on more than one occasion in your life?

A I did.

Q Would you look around the courtroom and see if he is here?

A The gentleman with the glasses, seated --

Q Would you further identify him?

A The white shirt and the blue and white polka dot tie.

MR. BLOSSNER: Concede identification.

Q Do you know a person by the name of John DiSalvo, Mr. Rossi?

A I do.

Q Have you seen John DiSalvo on more than one occasion in your life?

A I did.

Q Is this John DiSalvo who has just risen?

MR. MERBERG: Conceded.

Q Do you know a person by the name of George Carrado?

A I do.

MR. MITCHELL: We will concede identification.

Q Do you know another person, Mr. Rossi, by the name of Anthony Ricco?

A I do.

Q Did you know him at one time by the name Tony Bragiole?

A I did.

Q When did you first meet in your life with Anthony Ricco?

A February or March 1971.

Q Did you know him by that name at that time?

THE COURT: Which name?

Q Anthony Ricco.

A I did not.

Q What name did you know him by?

A Tony Bragiole.

Q When did you first meet in your life with Angelo Ricco, Mr. Rossi?

A Around December 1970.

Q What is the relationship between Bragiole and Angelo Ricco?

A Nephew and uncle.

Q Who is the nephew and who is the uncle?

A Angelo Ricco is the nephew and Tony Bragiole is the

uncle.

Q Did there come a time, Mr. Rossi, that you borrowed money from or through Bragiole?

A There did.

Q When was that?

MR. MITCHELL: Your Honor, may I ask for an instruction to the jury that anything relating to the borrowing of money has nothing to do with my client.

THE COURT: Well, I can't do that specifically, but I will at the appropriate time instruct the jury with regard to questions involving conspiracy.

Ladies and gentlemen, as you learned yesterday, there are two charges, two types of charges in this indictment: One is of a conspiracy; the other is of substantive or specific charges against specific defendants. You will be called upon to determine whether or not the defendants on trial have been shown by the Government beyond a reasonable doubt to have participated in the conspiracy alleged here.

In the first instance, you must find that to be the case, if you find it at all, by evidence against that particular defendant.

If, during the course of the trial, you are persuaded beyond a reasonable doubt by independent evidence

against a particular defendant that he did join the conspiracy, and he did have knowledge of the conspiracy, and he did join the conspiracy wilfully, knowingly, then the evidence of the acts of other conspirators, or statements of other conspirators, taken or made in furtherance of the conspiracy, may also be used as evidence against him.

In other words, once you find somebody is in the conspiracy, then they are chargeable as to what is done by the others who are in the conspiracy in furtherance of the conspiracy. But, as Mr. Mitchell has pointed out, the testimony that is being given now, for example, does not specifically apply to Mr. Carrado. I cannot say whether it will be connected or it will not be connected hereafter.

MR. JACOBS: Might I add that it may not affect other defendants, namely, Mr. Rizzieri.

THE COURT: I didn't mean to single out a particular defendant.

Q When was this, Mr. Rossi, that you borrowed money from Bragiole or through Bragiole?

A I believe it was in February or March of 1971.

Q How much money did you borrow from or through him?

A $5,000.

Q What was the reason for the loan?

MR. JACOBS: Objection.

THE COURT: Overruled.

A To obtain narcotics.

Q Was Bragiole aware of the reason?

MR. GOLDBERGER: I object.

THE COURT: Yes.

You can ask if he told him.

Q Did you have a conversation with him with respect to why you wanted the money?

A I did.

Q What was said, in substance?

A I told him that I wanted to borrow $5,000 because I was going to give it to an Englishman who had two passports and who was going to bring cocaine back into the United States.

Q Subsequent to that, did he give you the money?

A He did.

Q Were you successful in this venture?

A I was not.

Q Were you able to repay Bragiole?

A I was not.

Q Did anything happen as a result of this failure to repay him?

A Yes.

Q What happened?

A They -- I sat down with Angelo Ricco and I agreed to pay 25 --

Q Just a minute. What happened?

A I couldn't pay the money.

Q You don't have to give --

MR. GOLDBERGER: Just a second, Judge. I object. I would like him to let his own witness finish the answer.

THE COURT: He asked what happened. You can't ask a more general question than that.

MR. GOLDBERGER: No, no. He interrupted in the middle of the answer.

THE COURT: Go ahead and answer the question, as you would.

THE WITNESS: I couldn't pay the money, your Honor.

THE COURT: We know that. What did you do?

THE WITNESS: So I agreed to pay $25 a week.

Q Were you paying $25 a week?

A Sporadically.

Q Did there come a time when you sat down with Angelo Ricco and Bragiole with respect to the remainder of the money which was unpaid?

A I did.

Q When was that?

A October or November of 1971.

Q Where?

A At the Rosedale Social Club, across the street from the Garden of Roses.

Q What street is that on?

A I believe it's on 176th Street, I'm not sure. I know it's across the street from the Garden of Roses.

THE COURT: Across the street from what?

THE WITNESS: A bar, your Honor, the Garden of Roses.

Q In the Bronx?

A Yes.

Q Did you have a conversation with these people at that time?

A I did.

THE COURT: He didn't say "these people"; he just said Anthony Ricco.

MR. AMOROSA: I believe he said Angelo Ricco.

Q Who was present?

A Angelo Ricco and Tony Bragiole.

Q Was anybody else present besides the three of you?

A There could have been.

Q What was said in substance, Mr. Rossi, unless you can remember the exact words?

A I can't remember the exact words. I could tell you what I told them and what they told me. I told them that I think I can get customers for narcotics and that if they can give me the narcotics on consignment then I'd be able to pay off the $5,000, or the remainder that I owed them, more faster.

Q Was anything else said?

A They agreed to it.

Q After this conversation, Mr. Rossi, did you meet with Fred Blase?

A I did.

MR. RICHMAN: Objection, your Honor; leading.

THE COURT: Sustained.

Ask if he had a meeting with any of the defendants, who, and so forth. We are getting to material now where leading will not be allowed.

Q Where were you working at this time, Mr. Rossi?

A I believe the Thruway Taxicab Company on Gun Hill Road in the Bronx.

Q Where was the defendant Freddy Blase working at this time?

A Thruway Taxicab Company on Gun Hill Road in the

Bronx.

Q Do you recall where you met with Mr. Blase, after the conversation with Angelo Ricco and Bragiole?

MR. RICHMAN: Objection to the form of the question, your Honor.

THE COURT: Ask him if he did meet. I don't think he said he did meet. He said he knew him.

Q After this conversation with Bragiole and Angelo Ricco, did you meet with Freddy Blase?

A I did.

Q Where did you meet with Freddy Blase, if you can recall?

A I believe it was in the cab company.

THE COURT: Where?

THE WITNESS: Thruway Taxicab Company in the Bronx.

THE COURT: Was it a barn, an office?

THE WITNESS: They have an office where the drivers wait for calls.

THE COURT: Are you talking about the office?

THE WITNESS: Not the office where the dispatcher sits in. There is like an office on the outside with benches where all the drivers who drive the cabs wait for a call.

THE COURT: What part of the vicinity are you talking about?

THE WITNESS: I'm talking about where the drivers wait, your Honor.

Q What was your relationship to Blase at this time, Mr. Rossi?

A We were going to become partners.

Q Do you remember the exact words of the conversation you had with Blase at this time?

A Not the exact words.

Q Can you tell us the substance of them?

A The substance of the conversation was that I met the people, that I'm going to be able to get narcotics, ounces on consignment, and that we were going to do business.

Q Did Blase say anything?

A He agreed to it.

Q How long --

THE COURT: What did he agree to?

THE WITNESS: That we were going -- see, your Honor, we were going to get pure ounces and then break them down and resell them as commercial ounces.

THE COURT: What was -- what did he say that he would do, if he said he would do anything?

THE WITNESS: We both said that we will cut them

up, give them to the people, collect the money and we both would be responsible.

Q How long had you been working at Thruway Taxi Company until this time?

A Five months, six months, to the best of my recollection.

Q Do you recall how long Blase had been working there, up until this time?

A Maybe the same amount of time or a little more

Q Had you spoken with Blase prior to this conversation regarding this same subject matter?

A Yes.

Q After the conversation with Blase, Mr. Rossi, did you meet again with Angelo Ricco?

A I did.

Q How long after, generally, the conversation with Blase did you meet with Angelo Ricco?

A Maybe a day.

Q Where did you meet with Angelo Ricco?

A At the social club across the street from the Garden of Roses in the Bronx.

THE COURT: Was that at the same place?

THE WITNESS: Yes, your Honor.

Q Did you have a conversation with him at that time?

A I did.

Q Do you recall whether anyone else was present besides you and Angelo Ricco?

A I believe Tony Bragiole was there.

Q What was said, in substance?

A Angelo Ricco told me to meet him later on that night, a couple of hours later after I spoke to him, at the Chester House in Parkchester in the Bronx.

Q Did he tell you for what purpose?

A Yes.

Q What did he say?

A He said that that's where he was going to give me the ounce.

Q What did you do later on that evening, Mr. Rossi?

A I got in touch with Freddy Blase and Freddy and I drove to the Chester House, which is in Parkchester in the Bronx.

Q Is there a more specific address on that than just the Chester House, Parkchester in the Bronx?

A It's around the Oval. I don't know the specific address, no.

Q It's around the what?

A There is an oval, a circle, and it's around the oval. I believe it's next to a bowling alley, I believe.

Q What did you do, that is, you and Blase, when you got there?

A We went to the bar and we ordered a drink. We waited for Angelo Ricco to come.

Q Tell us in your own words what happened after that.

A Angelo Ricco came. To the best of my recollection, I think he had a drink. Then he went in the men's room and I followed him in the men's room.

Q Did you have a conversation with him at the bar prior to the time you both went into the men's room?

MR. GOLDBERGER: Judge, I object to the leading. Can he say what happened when they got there, and let Mr. Rossi tell us, rather than Mr. Amorosa.

THE COURT: Sustained.

Q All right, Mr. Rossi. Tell us what happened when you were sitting at the bar or standing at the bar with Freddy Blase.

A Well, when Angelo walked in the men's room I followed him, and in the men's room there was a urinal and there was two commodes. I got in one commode and he went in the other commode, and he handed me an ounce of heroin underneath, said it cost between 7 and 8 hundred dollars, and I have a week to pay, and he said it takes a 5 or a 6.

THE COURT: He said what? I didn't understand the last part. A week to pay and what?

THE WITNESS: How strong it is, your Honor, how many times it could be cut.

THE COURT: What did he say?

THE WITNESS: He says it's a 5 or a 6.

Q What is a 5 or a 6 in terms of diluting heroin, Mr. Rossi?

A That's how many times heroin could be diluted.

Q That heroin or pure heroin?

A That heroin.

Q How many times can pure heroin be diluted before it's ready for --

MR. MITCHELL: Objection, your Honor.

THE COURT: Sustained for the moment.

Q He said that this heroin could be diluted 5 or 6 times?

A Yes.

Q What happened after he handed you that ounce?

A He left.

Q And what did you and Blase do?

A Me and Freddy Blase left.

MR. MITCHELL: Your Honor, may we have a date for this?

THE COURT: Yes.

Q What is your best recollection, Mr. Rossi, as to when this occurred?

A October or November of 1971.

Q Where did you and Blase go after you got this ounce of heroin from Angelo Ricco?

A To my mother's house on Wallace Avenue.

Q Did you test the quality of the heroin?

(Continued on next page)

bsb-3 Rossi-direct

ready for sale?

THE WITNESS: Right, your Honor.

Q In this two-day period, Mr. Rossi, who did you speak to to determine whether they wanted commercial ounces?

A John, from Allerton Avenue --

Q Do you know hiw last name?

A No, I don't know his last name.

Q Who else?

A Jerry from Lydig Avenue, and George Carrado.

THE COURT: George who?

THE WITNESS: George Carrado, your Honor.

Q The defendant Carrado?

A Yes.

Q Where did you speak to him, do you recall?

A I think in the vicinity of my mother's house.

Q Keep your voice up. Where did you speak to him?

A I think in the vicinity of my mother's home.

THE COURT: Personally or on the telephone?

THE WITNESS: Personally, your Honor.

Q Do you recall whether anybody else was present when you spoke with him?

A Freddie Blase.

Q What was the substance of the conversation you

had with him?

A How much we were going to charge him for the commercial ounce and how much time he had to pay it back.

Q Did he say anything in the conversation?

A Did George Carrado say anything in the conversation?

Q Yes.

A He was anxious to make money, he says, you know, he wanted the shot.

Q How many commercial ounces did you make up over the next several days, that is, from the time that you got the ounce from Angelo Ricco?

A Four or five.

Q What did you do with these four or five commercial ounces?

A We resold them.

Q Who did you sell them to?

A Jerry -rom Lydig Avenue, John From Allerton AVenue, and George Carrado.

Q Had you known Carrado prior to this time, Mr. Rossi?

A Yes, I did.

Q How long did you know him?

A About 15 years.

bsb-5 Rossi-direct

Q Where did he grow up?

A The same neighborhood that I grew up.

Q Were you selling these commercial ounces to these people for their own use or resale?

A Resale.

Q Did you generate any cash in this period, that is, from the time you got the ounces from Angelo Ricco until the time -- for the next, say, the next week, approximately?

A I did.

Q How much cash did you generate?

A About $1500.

THE COURT: In what period of time?

THE WITNESS: A week, about a week's time, your Honor.

Q What did you do with this $1500?

A I paid for what the original ounce cost me that I got off Angelo Ricco and then me and Freddie split the rest.

THE COURT: Paid who?

THE WITNESS: Angelo Ricco, your Honor.

Q Where did you pay Angelo Ricco, do you recall?

A To the best of my recollection, I think I paid him at the Chester House again.

bsb-6 Rossi-direct

Q When you paid him, did he give you anything?

A Another ounce.

Q Was anyone else present when he gave you this second ounce?

A Freddie Blase.

Q Where was it in the Chester House?

A In the men's room again.

Q All three of you were in the men's room?

A I think so.

THE COURT: What is the Chester House, is it an apartment house?

THE WITNESS: It is a restaurant and a bar, your Honor, and I think a bowling alley is next to it

THE COURT: You mean on the street floor, street level?

THE WITNESS: It is on street level, yes, your Honor. Street level.

Q What did you and Blase do --

THE COURT: At which one of the establishments was the men's room inthat you are talking about, the restaurant, bar, bowling alley, where?

THE WITNESS: When you walk into the bar entrance, your Honor, right in back of the bar, like in back of me is the men's room, you know, you open the door.

bsb-8 Rossi-direct

THE WITNESS: Yes, your Honor.

Q Did you both go in one commode? How did you arrange it in the men's room, can you recall?

A To the best of my recollection, I think the second time that I stood by the urinal and Freddie Blase went in the other commode and they exchanged the money and the goods again.

Q What did you do with this ounce, Mr. Rossi?

A Resold it.

Q In what manner?

A Same manner, seeing how many commercial ounces we were going to sell, diluted it, sold it.

Q What were you charging at this time, you and Blase charging at this time for commercial ounces?

A I think about $300.

MR. GOLDBERGER: I am sorry, I didn't hear the answer.

THE COURT: $300.

MR. GOLDBERGER: $300.

Q How many dosages of heroin can be shot from one commercial ounce?

MR. MITCHELL: Objection, your Honor.

THE COURT: Sustained.

Q Who did you sell the commercial ounces to,

Mr. Rossi, from this second ounce that you received, you and Blase received from Angelo Ricco?

A The same people, but then I think -- I think at this time we met Robert Menstasti.

THE COURT: Who?

THE WITNESS: Robert Menstasti.

Q You met Robert Menstasti and what?

A I think we gave him a commercial ounce, too.

Q What did you do with the money you generated for the sale of these ounces?

A Paid for the original ounce and split the difference.

Q Who split the difference?

A Me and Freddie Blase.

Q Who did you pay for the second ounce?

A Angelo Ricco.

Q Did there come a time, Mr. Rossi, when you and Blase received additional heroin from Angelo Ricco and Bragiole?

A We did.

Q How many times would you estimate, in addition to the two that you have already testified to, that you took heroin from them in October-November of 1971?

A About three to four more times.

BEST COPY AVAILABLE

Q Where were the deliveries of heroin generally made to you and Blase?

THE COURT: Did you ever come to know what Tony's name was, any other name besides Tony?

THE WITNESS: No, your Honor.

MR. AMOROSA: I thought that had been in the record, your Honor, I am sorry.

Q Where were the deliveries generally made to you and Blase, Mr. Rossi?

A Chester House, Jack-in-the-Box in the E.J. Korvette shopping center on Bruckner Boulevard and I believe once by the club.

Q What club?

A RosedaleAvenue Social Club in the Garden of Roses.

Q What amounts were these deliveries?

A Ounces.

Q Who did you talk to to arrange the deliveries of this heroin?

A Angelo and Tony.

Q Tony who?

A Angelo Ricco, Tony Bragiole and I think we spoke to Tony from Castle Hill Avenue.

Q Where did youtalk to these people to arrange

BEST COPY AVAILABLE

these deliveries?

A Mostly in the vicinity of the social club, across the street frm the Garden of Roses.

THE COURT: Where, on the street, inside?

THE WITNESS: On the corner, in front of the building, taking a walk around the block talking about it.

Q What did you and I ase do with this heroin, Mr. Rossi?

A We sold it.

Q What did you do with it before you sold it?

A We diluted it.

Q Who did you sell it to?

A John from Allerton Avenue, Jerry from Lydig Avenue,Ge orge Carrodo, Robert Menstasti.

Q How much money were youpaying for the heroin at his time?

A Seven to $800 an ounce.

Q Where were you making your own deliveries to Carrado in this period?

THE COURT:To whom?

MR. AMOROSA: The defendant Carrado.

A By the drugstore on Rhinelander Avenue and Williamsbridge Road. By my mother's house and by the apartment building, I think it was 1475 Williamsbridge Road.

Q Whose apartment building was that?

A That is where George lived.

Q What floor did he live on, if you can recall?

A Second or third, to the best of my recollection.

Q Where were you diluting the heroin, Mr. Rossi?

A At my mother's.

Q Any place else?

A Sometimes on Wallace Avenue.

THE COURT: What is Wallace Avenue?

THE WITNESS: That is where I used to live, your Honor.

THE COURT: By yourself or with somebody else?

THE WITNESS: My wife.

Q Were you using these places as stashesat the time?

A I was.

Q Tell us what a stash is, Mr. Rossi.

A A stash is where you can keep heroin, money, cutting material, guns. You know.

Q How much money were you generating in this period October, November, 1971?

A How much money did we generate total?

Q As best as you can give it to us. If you can give us the total, the weekly, your best shot at it.

A Weekly, every ten days, about 1500, give or take a few dollars.

Q Who was assisting you in cutting, diluting the heroin and reselling it to your customers?

A Freddie Blase.

Q What did you do with the money that you and Blase generated for the sale of this heroin?

A We split it up.

Q What else did you do with it?

A We paid for the original, what the cost was for the ounce.

Q Around this time, did youtake on any additional partners besides Blase?

A I did.

Q Who did youtake on?

A Anthony Criscenti and Peter Criscenti.

Q Do you know how to spell the last name?

A C-r-i-s-c-e-n-t-i, I believe.

Q Were they brothers, father and son?

A They were cousins.

Q Where were they from?

A Neill Avenue in the Bronx.

Q Were you still working at the cab company through this, Mr. Rossi?

A To the best of my recollection, yes.

Q Was Blase?

A To the best of my recollection, yes.

Q Where was this cab company again?

A It was on Burke Avenue, on the corner of Gunhill and Burke in the Bronx.

Q Why did you continue to work at the cab company?

MR.JACOBS: Objection.

THE COURT: Overruled.

A Mainly as a front.

Q Did youuse the cabs to make deliveries?

A Sometimes.

Q ABout the end of November 1971, Mr. Rossi, to about the middle of July 1972, did you receive additional quantities of heroin from the Riccos?

MR. GOLDBERGER: Objection. What happened during that period of time is a fair question.

THE COURT: I will sustain the objection in part.

Between December of '71 and July of '72, what were your relations with Angelo and Anthony Ricco?

THE WITNESS: We were still getting heroin, your Honor.

Q What quantities?

A Ounce quantities.

Q How many times would you estimate you received heroin?

A From December '71 to July '72?

Q Approximately the beginning of December 1971 to about the middle of July 1972, yes.

THE COURT: About seven and a half months.

A About 15 ounces.

Q How many different occasions?

A Sporadic at that time.

Q You say you got 15 ounces?

A From December to July.

Q Does that mean 15 times or just the total quantity of heroin you received?

A The number of times that we got heroin was about 15 times.

THE COURT: You got an ounce each time?

THE WITNESS: Sometimes we got two, your Honor.

THE COURT: If arithmetic is correct and you met him 15 times and sometimes you got more than one ounce, you would have gotten more than 15 ounces.

THE WITNESS: Yes.

Q Do you recall specifically where each delivery was made and its exact sequence?

A The club.

Q The question, Mr. Rossi, do you recall specifically where each delivery was made and its exact sequence?

A No.

Q Do you recall where deliveries were generally made to you?

A I think I do.

Q Who were your partners in this period, if any?

A Freddie Blase.

Q Were theCriscentis still with you?

A On and off.

Q Where were the deliveries generally made to you?

A Jack-in-the-Box. I think the Four Winds once, the seafood restaurant in City Island. The vicinity of my mother's house.

MR. GOLDBERGER: Can we be a little more precise than the vicinity of his mother's house.

THE COURT: What do you mean?

THE WITNESS: Maybe I met him on Williamsbridge Road, maybe around the block.

THE COURT: How far from your mother's house?

THE WITNESS: My mother lived at 2007 Narragansett Avenue.

THE COURT: These other places are how far from that?

THE WITNESS: The other deliveries.

THE COURT: The ones that you said were in the vicinity. Were they right down in front of the building, a block away, two blocks away? When you say "vicinity," what do you mean by the word?

THE WITNESS: Around the corner.

Q Where is the Jack-in-the-Box, Mr. Rossi?

A The Jack-in-the-Box is on the E.J. Korvette shopping center in the Bronx on Bruckner Boulevard.

Q What is the Jack-in-the-Box or what was it at the time?

A It is a place where you walk up and talk into a jack and order hamburgers, tacos, cokes.

Q Who did you talk to to arrange these deliveries?

A Angelo Ricco, Tony Bragiole.

Q Where did you speak to these people?

A In the vicinity of the club across the street from the Garden of Roses in the Bronx.

Q Any place else?

A Mostly around there, around the club.

THE COURT: Were the arrangements for deliveries made on separte occasions from the deliveries themselves or when you received a delivery, did you then make arrangement for the next delivery?

THE WITNESS: No, your Honor. Let's say we got an ounce on a Monday. Let's say a week later, which was seven days later next Monday we didn't have all the money, we will tell him maybe we were $100 or $200 short and to wait two days.

Then we will bring him all the money and then he will say meet me tomorrow night here or there and I will give you another ounce or whatever we wanted, an ounce or two ounces.

THE COURT: Mr. Amorosa, I think we will take a short recess.

(Recess.)

(In open court; jury present.)

THE COURT: You may proceed, Mr. Amorosa.

BY MR. AMOROSA:

Q In this period we are talking about, Mr. Rossi, from approximately the end of November, beginning of December, 1971 through middle of July 1972, who were your partners?

A Freddie Blase, Peter Criscenti and Anthony Criscenti.

Q Where again, Mr. Rossi, were you meeting with Angelo Ricco and Bragiole during this period?

A Sometimes around the corner from my mother's --

when you say meeting, for what, to bring me narcotics?

Q Excuse me. To make arrangements for subsequent deliveries of heroin.

A Mostly at the club, across the street from The Garden of Roses.

Q Who was usually present with Bragiole in this period, if anyone?

A Angelo Ricco and sometimes Charles Indiviglia --

MR. GOLDBERGER: May we refer to Bragiole as Anthony Ricco, unless Mr. Rossi didn't know him by that name?

MR. AMOROSA: I think that was the testimony, at that time.

Q Mr. Rossi, did you know that Bragiole's real name at that time, the time period we are talking about, was Anthony Ricco?

A No.

Q When did you come to learn that was his real name somewhere around September or October of 1972?

THE COURT: Did you say there was somebody there at some of these meetings besides Anthony and Angelo Ricco?

THE WITNESS: Yes, Charly Poops.

Q Who was Charly Poops?

A Charles Indiviglia.

Q How did you know him?

A I knew him by Charly Poops.

Q Is that the same Charles Indiviglia who is a defendant in this case?

A That is correct.

4A

1/6/76 AM 4b

1 rkmch Rossi-direct

Q Did Charles Indiviglia take charge of arrangements of narcotics for you and Blase?

MR. BRACKLEY: Objection; leading.

THE COURT: Sustained.

You will have to ask what role Mr. Indiviglia played.

Q What role, if any, did Mr. Indiviglia play in the arrangements to have heroin delivered to you and Blase?

MR. BRACKLEY: I object to the form of the question. It assumes he had a role.

THE COURT: He said, "If any."

A Charles Indiviglia delivered heroin to me and Freddy when we had the seafood restaurant --

THE COURT: We don't know when that was. When was it?

THE WITNESS: Around March of 1972.

Q Is that the only time --

THE COURT: Around March of '72. Was it on one occasion or more than one occasion?

THE WITNESS: In March, one occasion, your Honor.

Q Where was this seafood restaurant?

A I believe it was 84 City Island Avenue.

Q In the Bronx?

A In the Bronx, on City Island.

Q Tell us in your own words what happened that day when Indiviglia delivered heroin to you.

A It was at nighttime --

THE COURT: Where was it?

THE WITNESS: In the seafood restaurant, your Honor.

A (Continuing) It was nighttime, about 7:00 or 8:00 o'clock, maybe a little later. Me and Freddy were inside and Charlie Poops, Angelo Ricco and Ralph walked in the seafood restaurant. Angelo and Ralph sat at a table and Charlie Poops walked in the men's room.

When he came out of the men's room, he said, "I put two ounces of heroin in the garbage pail."

I went to get the two ounces of heroin and we put it in back of the counter, I think under the cash register.

Q Was Blase present on that occasion?

A Yes, he was.

Q What kind of interest, if any, did you have in the seafood restaurant?

A I was part-owner.

Q Who was the co-owner with you?

A Freddy Blase.

Q Did you own the building?

A I did not. I rented.

7 rkmch Rossi-direct

jury to decide whether it has been signed or not been signed.

The objection is overruled. The document is received in evidence and the jury will disregard Mr. Richman's remarks.

(Government's Exhibit No. 1 received in evidence.)

xxx

DIRECT EXAMINATION RESUMED

BY MR. AMOROSA:

Q How long were you and Mr. Blase in the seafood restaurant, Mr. Rossi?

A About four weeks, five weeks.

Q When you were meeting with Bragiole during this period, who, if anyone, was he accompanied by?

A Charles Indiviglia.

MR. GOLDBERGER: Which period are we talking about?

THE COURT: What period are you talking about, for one thing?

THE WITNESS: Mostly, your Honor, when Tony would come around to the club he was always with Charles.

THE COURT: During what period of time?

THE WITNESS: From October up to -- from October '71 up to December '72.

THE COURT: You are going beyond July now?

THE WITNESS: Yes.

Q Did you pay anyone now besides Bragiole and Angelo Ricco in this period for the heroin?

A From December to July?

Q Right.

A To the best of my recollection, we could have paid Tony from Castle Hill Avenue once, too, now, I think, because I remember that.

Q Do you recall where you paid him?

A I do not.

Q Were you alone when you were picking up heroin?

A No, I was not.

Q Who was usually with you?

A Freddy Blase.

Q At the beginning of July, had you paid off the $5,000 that you owed to Bragiole?

A I did not.

Q I direct your attention now to the month of April 1972, and ask you if you left the state?

A I did.

THE COURT: State of New York? Is that what you mean?

Q The State of New York, Mr. Rossi.

A We left the State of New York, yes.

Q Where did you go?

A Miami Beach, Florida.

Q Who did you go with?

A Myself, Freddy Blase, Peter Criscenti, Anthony Criscenti and George Carrado.

Q How did you get there?

A We drove.

Q Where did you stay while you were there?

A When we first got there we checked in at the Newport; then from the Newport we went to the Dade Land Inn; then from the Dade Land Inn we went to the Holiday Inn in West Palm Beach; and then we stood at the Howard Johnson in Fort Pierce.

Q While you were in Florida, did you communicate in any way with New York?

A I did.

Q How did you communicate?

A By telephone.

Q Did anybody else in your party communicate with New York while you were in Florida?

A To the best of my recollection, yes.

Q Who?

A I believe Freddy Blase, George Carrado, Anthony Criscenti and Petey Criscenti.

Q What was Carrado's wife's name in this period in

to him there was a party of five.

THE COURT: That is a matter for you to bring out to the jury.

Overruled.

(Government's Exhibit No. 4 received in evidence.)

DIRECT EXAMINATION RESUMED

BY MR. AMOROSA:

Q I show you 4 in evidence, Mr. Rossi, and ask you again what it is.

A It's the registration card that I signed at the Howard Johnson's.

Q Is there a date on it?

A Yes, sir.

Q What is the date?

A April 8 -- year '72.

Q Is there an indication how many rooms you rented by signing that card?

A I don't --

Q Just one room?

A I believe so.

THE COURT: He is not an interpreter of that card any more than you or I, Mr. Amorosa, so you can bring out to the jury whatever you want by reading it to them.

MR. AMOROSA: Yes, sir.

Q Tell us, Mr. Rossi, how many people rented the room with you on this occasion, this one room?

A You are talking about the Howard Johnson at Fort Pierce, Florida?

Q That's right.

A Me and Anthony Criscenti.

Q Where were the other members of your party when you rented that room with Criscenti?

A Freddy Blase and Peter Criscenti were already there, and George Carrado wasn't there.

Q Where was George Carrado at that time?

A Well, when we were staying at the Dade Land Inn, George was having a problem back east so he flew home.

Q I show you Government Exhibit 2 for identification and ask you whether you can identify this.

Keep it to yourself.

A Yes.

Q What is 2 for identification?

A It's a picture.

Q A picture of who?

A Freddy Blase.

Q Who took the picture?

A I believe I did.

Q Where?

Q Who did you return with, do you recall?

A Myself, Freddy Blase --

MR. GOLDBERGER: I object and ask that the testimony regarding the Florida trip be stricken as not having any relevance in this trial at all.

THE COURT: Overruled.

Subject to the instructions I have given the jury about its application to the rules of evidence.

A Answer it?

THE COURT: Who did you come back with?

THE WITNESS: To the best of my recollection, myself, Freddy Blase, Petey Criscenti, Anthony Criscenti and a girl.

Q I direct your attention now, Mr. Rossi, to July of 1972 and ask you whether you left the State of New York in that month.

A I did.

Q Where did you go?

A San Juan, Puerto Rico.

Q Who did you go with?

A Myself, Freddy Blase and Robert Browning.

THE COURT: Browning?

THE WITNESS: Browning, your Honor.

Q How did you get to San Juan, Puerto Rico?

A We flew.

Q From what airport?

A Newark Airport, American Airlines, to the best of my recollection.

Q Who financed this trip?

A I did.

Q Where did you stay while you were in Puerto Rico?

A The Flamboyan Hotel in Condado Beach.

Q Where did Blase stay?

A Flamboyan Hotel in Condado Beach.

Q Did Browning also stay there?

A Yes.

Q Did you check in?

A I did.

Q Did you have your own room?

A I believe I did.

Q Did Blase have his own room?

A I believe he did, too, yes.

Q I show you Government's Exhibits 5 and 6 previously marked for identification and ask you whether you can identify them.

A Yes.

Q What is Government Exhibit 5 for identification?

A Is this 5?

Q Yes.

A 5 is when I checked into the Flamboyan Hotel in Puerto Rico; my name, my address and my signature.

Q Did you write that out yourself when you checked in?

A Yes, I did. I printed it and then I signed my name.

Q What is Government Exhibit 6 for identification?

A It's a registration of the room listed to Fred Blase.

Q Did you see Freddy Blase sign that card when he checked into the Flamboyan Hotel in Puerto Rico?

A I seen him fill out the card when I was filling out the card, yes.

MR. AMOROSA: We offer 5 and 6 for identification relating to the defendant Blase.

MR. RICHMAN: No objection, your Honor.

THE COURT: Received.

(Government's Exhibits 5 and 6 received in evidence.)

Q 5 and 7 contain also, do they not, Mr. Rossi --

THE COURT: Don't ask him what they contain. Just bring to the attention of the jury whatever it is you want to bring to their attention.

MR. AMOROSA: 5 and 6 also contain, besides the

bsb-2 Rossi-direct

MR. JACOBS: Can he fix the time and place, your Honor.

THE COURT: He has given the time which was July of '72, and he has given the place.

Go ahead, what did you say and what did he say? First of all, was it just the two of you or was there anyone else there?

THE WITNESS: There was other people, your Honor.

THE COURT: Other people other than who you have mentioned --

THE WITNESS: Me, Robert Browning, Freddie Blase and Jimmy Rizzieri.

Q What was said in substance?

A Robert Browning introduced me to Jimmy, you know, we were talking, we had a few drinks and Jimmy says --

THE COURT: This is Rizzieri?

THE WITNESS: Yes.

Jimmy Rizzieri said he would do anything to make money and we got to talking about narcotics, I says, "You know, I know where I can get narcotics." And he says, "You know, I may know of some people, when we get back to New York we will look each other up," to, you know, like that.

Q Excuse me. Rizzieri said he may have -- he may

bsb-3 Rossi-direct

know of some people with respect to what?

A To buy narcotics.

Q Was that in substance the conversation?

A Yes.

Q Did there come a time when you returned to New York State?

A I did.

Q And did you return with anyone who is in this courtroom?

A I did.

Q With whom did you return?

A Jimmy Rizzieri.

Q How did you return?

A We flew.

Q To where?

A I think Robert Browning was there, too -- Browning came back with us. We flew into Kennedy International, I believe the airlines was Pan American.

Q Did you fly under your own names?

A I didn't.

Q Rizzieri?

A To the best of my knowledge, no.

THE COURT: How do you know whether he flew under his name or not?

MR. AMOROSA: Your Honor, perhaps we should go to the side bar with respect to the response to that question.

THE COURT: You would know better than I do.

(At the side bar.)

MR. AMOROSA: I believe that he would answer that Rizzieri had some stolen credit cards and he used them to come back. I didn't want to put it in for obvious reasons.

MR. JACOBS: I would ask that your Honor withdraw the question.

THE COURT: I will withdraw it.

(In open court.)

Q After your return to New York, Mr. Rossi, did you meet with Bragiole and Angelo Ricco?

A I did.

Q Where?

A At the club across the street from the Garden of Roses in the Bronx.

Q What kind of club is this? You have mentioned it several times now.

A You want me to describe it to you?

Q Yes.

A It is a restaurant club. It has got a window,

you know, like a full store window to the left, and it has got a door to the right and you walk in the club, when you open the door,maybe two tables at the left, maybe one table at the right, and you walk about 20 feet and there is like a bar. Then directly in back of the bar there is a bathroom.

Q When was this meeting that you had with Bragiole and Angelo Ricco -- withdrawn.

How long after the time that you got back from Puerto Rico did you have this meeting with Bragiole and Angelo Ricco?

A Two days, three days.

Q Was anybody else present?

A I think so, yes.

Q Who?

A I think Charlie Poops was there.

MR. BRACKLEY: I have to object to what he thinks, your Honor.

Q What is your best recollection?

THE COURT: Sustained as to what he thinks.

A To the best of my recollection, I know Angelo and Tony were there, Angelo Ricco and Tony Bragiole.

Q Let me ask you this: Who was --

MR. BRACKLEY: Your Honor, may he finish

his answer?

MR. AMOROSA: I am sorry.

THE COURT: It seems to me he has answered.

Q Who was usually with Bragiole when you saw Bragiole?

MR. GOLDBERGER: I object to who usually was what.

THE COURT: Sustained. He has already answered that once before.

MR. JACOBS: Could we fix a time as to when he returned from Puerto Rico.

THE COURT: How long were you in Puerto Rico?

THE WITNESS: About four weeks, your Honor.

THE COURT: Then when did you return, approximately?

THE WITNESS: Somewhere at the end of July or maybe just the beginning of August.

THE COURT: Proceed.

Q What was the substance of the conversation you had on that occasion?

A We discussed narcotics --

MR. BRACKLEY: Excuse me, sir, I think there shouldn't be any implication that he is saying that he recalls Mr. Indiviglia being there. It is sort of left

open.

THE COURT: I sustained your objection. The jury should disregard what he said he thinks.

Q What was the substance of the conversation, Mr. Rossi?

A Narcotics.

Q What was said in substance?

A YOu want to know what I said and what they said?

Q That's right.

A Well, Number 1, they were still made because I owed them the money, I owed them part of the $5000 and I says that I am phasing Freddie Blase out because Freddie Blase stood in Puerto Rico, and I am going to go partners with the new guy by the name of Rizzieri, and he has got some people who can move some weight and naturally, you know, I got -- what's his name, Bobby, Robert Menstasti, who they knew moved a lot of weight, and I said if you can give me another shot, and give me the goods on consignment, I can pay them the money very quickly at this time.

Q What was said in response to that proposal?

A They agreed.

Q You mentioned weight several times, Mr. Rossi, in relating the substance of that conversation, what did you mean when you say "weight"?

A Well, in the beginning when I was moving the our , you know, I was selling --

MR. JACOBS: What did he mean at that time in that conversation, your Honor?

THE COURT: What did you mean by "weight"?

THE WITNESS: I meant more than ounces, eighths, quarters.

THE COURT: You meant literally weight?

THE WIT NESS: Literally weight.

THE COURT: Weight of heroin.

THE WITNESS: Weight of heroin.

Q You also said that they knew that Menstasti was moving a lot of weight. Did you have any prior conversations with either Angelo Ricco or Bragiole with respect to Menstasti?

A Yes.

Q And when was that conversation or when were those conversations? If you can recall.

A You mean prior to the time when I came back from PUerto Rico?

THE COURT: Yes.

A From October or November 1971, till up to the time we went to Puerto Rico, during that period of time. I can't tell you where, because I spoke so many times.

Q What was the substance of what was said with respect to Menstasti and weight?

A There was a controversy.

THE COURT: Between whom and when?

Q Tell us what was said.

A It was a known fact that --

MR. JACOBS: I object.

THE COURT: Sustained. Tell us what was said between you and Ricco or -- Mr. Ricco and Mr. --

THE WITNESS: He said --

THE COURT: Which one said?

THE WITNESS: What I am talking about, your Honor, is when I came back from Puerto Rico.

THE COURT: That is not what Mr. Amorosa is asking you about.

Q Was there a conversation when you came back from Puerto Rico with respect to this?

A Yes.

Q What was said in substance with respect to that?

A When I came back from Puerto Rico?

Q Right.

A Angelo Ricco and Tony Bragiole --

MR. GOLDBERGER: I object.

THE COURT: Sustained. You can't tell us

what somebody else knew. Just tell us what you said then and what they said.

THE WITNESS: All right.

They says that Robbie was working for Sally Larka and that if Sally Larka knew that he was going to start to move goods for me, and I says "Yeah," and I says that Robbie is going to move a lot of goods.

Q What are goods?

A Heroin.

Q And Robbie is Menstasti?

A Yes, Menstasti.

THE COURT: Mr.Amoroso, we will quit for lunch now. Return at two o'clock.

(Luncheon recess.)

THE COURT: We can do that tomorrow morning.

(In open court; jury present.)

A L B E R T R O S S I resumed.

THE COURT: Ladies and gentlemen, I apologize for keeping you waiting. Unfortunately in a trial as complex as this in the sense there are a large number of people involved, questions of law do arise from time to time which the Court and lawyers have to talk about among themselves.

I am doing my best to avoid having those discussions take place during the hours when the jury should be hearing the evidence, but once in a while we will have to ask you to wait in the jury room or the jury box.

DIRECT EXAMINATION (continued)

BY MR. AMOROSA:

Q Just prior to the luncheon recess, did you testify about a meeting you had withAngelo Ricco and Bragiole after you came back from Puerto Rico, did you not?

A That is correct.

Q After that meeting, did you see James Rizzieri?

A I did.

Q How soon after the meeting, do you recall?

A The same day or a day later.

Q Do you recall where?

A To the best of my recollection, at my mother's.

Q Did you have a conversation with him?

A I did.

Q Was anyone else present?

A Myself and Mr. Rizzieri.

Q What was said in substance?

A What I said and what he said?

Q Yes.

THE COURT: That is right.

A I said that I would be able to get narcotics on consignment. I said I was going to get rid of the leeches, meaning the other people that were partners with us, Peter Criscenti and Angelo Criscenti. I told him I wasn't partners with Freddie Blase any more and I would become partners with you and we could start to move narcotics.

Q What did he say?

A He agreed to everything.

Q Did you tell him who your source was?

A Yes.

Q Where was Mr. Blase at this time, to your knowledge?

A To the best of my recollection, in Puerto Rico.

THE COURT: What you mean is, the last time you

saw him he was in Puerto Rico?

THE WITNESS: He stayed there.

THE COURT: You don't know if he went to South America or Egypt?

THE WITNESS: Right.

Q After you last saw him, did you then meet with Angelo Ricco and Bragiole?

A I did.

Q How long after?

A A day or two.

Q Where was this, Mr. Rossi?

A At the club, across the street from The Garden of Roses.

Q Can you give us a date on this, the exact date, if you can, if not the month,whether it was the beginning of the month, the end of the month or when?

A Somewhere towards the beginning of August.

Q Which year?

A 1972.

Q What was said, in substance?

A We wanted to make a move --

MR. JACOBS: Objection.

THE COURT: Who said this?

THE WITNESS: Me and Jimmie Rizzieri wanted

heroin.

THE COURT: You met with Mr. Ricco and Mr. Bragiole?

THE WITNESS: I met with Mr. Angelo Ricco and Bragiole.

THE COURT: Who said that they wanted to make a move?

THE WITNESS: Before I went to meet them --

THE COURT: You were asked what happened when you met them.

THE WITNESS: I said I wanted narcotics.

Q Was anybody else present besides the three of you?

A Yes.

Q Who else was present?

A Charles Indiviglia.

Q Let's hear the conversations from beginning to end as best you can recall.

A To the best of my recollection, I said that I wanted narcotics and they said they would give it to me and we discussed the time and the place.

Q When you say "they said," can you recall who said?

A Angelo Ricco and Tony Bragiole.

Q Do you recall Indiviglia saying anything at this

meeting?

A At this meeting, no.

Q Was anything said with respect to where you would pick it up?

A Yes.

Q What was said with respect to that?

MR. GOLDBERGER: Judge, I don't like to interrupt but I have to object. If he asked him for the full conversation, he started to relate it and now he is feeding him again. If he has the full conversation, let him relate it.

THE COURT: May I suggest, Mr. Amorosa, you say, "Was anything more said?"

Q Was anything more said, Mr. Rossi, at this meeting?

THE COURT: Besides that you wanted narcotics and Mr. Ricco and Mr.Bragiole said okay?

THE WITNESS: Where I would pick it up. They said I have to go to Castle Hill AVenue by the Gulf gas station across the street from where Tony lived, and that I would meet Tony and Tony would give me two ounces of heroin.

THE COURT: Which Tony are you talking about?

THE WITNESS: Tony, from Castle Hill Avenue.

Q This is different from Tony Bragiole, is it not?

A Yes.

Q Who is Anthony Ricco?

A Yes.

Q After this conversation, Mr. Rossi, what did you do?

A I went to Castle Hill Avenue and I picked up two ounces of heroin.

Q From whom?

A From Tony, who lived on Castle Hill Avenue.

Q Where did you pick it up, tell us how you got there, who you met when you were there, who was with you, etc.

A When I got there, I believe I went to the gas station. I called him up. He came down from his house.

THE COURT: Who is he?

THE WITNESS: Tony, from Castle Hill Avenue.

A (continuing) He came down from his house and gave me two ounces of heroin and wanted to know when I would make payment and I said within the next few days.

Q Was anyone with you at that time?

A On that particular transaction, no, sir.

Q What did you do after you got the two ounces

of heroin?

A I met with Jimmie Rizzieri. To the best of my recollection, we made up an eighth.

Q What do you mean you made up an eighth?

A With the two ounces of heroin we had, we threw the two ounces of cut into it.

Q You mean mannite or something like that?

A Mannite or lactose, sugar.

MR. JACOBS: Can we fix the place?

Q Where did you meet with Rizzieri?

A I believe at my mother's.

Q Did anyone help you cut the heroin down to the eighth?

A Yes.

Q Who helped you?

A Jimmie Rizzieri.

Q What is an eighth of heroin?

A Four and a quarter ounces of heroin.

Q And it is one-eighth of what?

A One-eighth of a kilo.

Q How many pounds in a kilo?

A Two pounds, two ounces.

Q And what did you and Rizzieri do with this eighth after you made it?

A We sold it to either Pete, the Weep, or Bobbie Menstasti.

Q Who is Pete, the Weep?

A He is a customer that James Rizzieri had.

Q Was that his real name, Pete, the Weep?

A No.

Q Do you know his real name?

A Today I do, yes.

Q What is his real name?

A I believe Angiolillo.

End 1A

76b

Q Where did you sell it to Petey the Weep, if you recall?

MR. JACOBS: Objection. He said he sold it to one or the other.

MR. AMOROSA: I withdraw that question.

Q Where did you sell it to either the Weep or Bobby Menstasti?

A Either by Petey the Weep's house, which was located off the Cross-Bronx Expressway, or by Robert Menstasti's house, which was located I believe on Kruger Avenue in the Bronx.

Q Mr. Rossi, what happened over the next several months with respect to your partnership with Rizzieri?

A I introduced him to the Riccos.

Q What happened over the next several months?

A We were picking up quantities of heroin, large quantities.

Q From whom?

A From Tony Bragiole and Angelo Ricco.

Q Who did you use for customers for this heroin?

A Robert Menstasti, Petey the Weep, Tony Bugs, George Carrado, Johnny Boone, Dominic from Long Island, a guy by the name of Red from Arthur Avenue, Nathaniel Arnold.

2 rkmch Rossi-direct

Q Could there have been more that you can't recall at this moment?

MR. JACOBS: Objection to the leading.

THE COURT: Sustained.

MR. AMOROSA: Withdrawn. I will go on to another question.

Q How much goods did you give the Weep over the next several months, that is, from about the beginning of August through December 1972, roughly?

A Say about 25 to 30 times we gave him heroin, mostly eighths and quarters, and one time or two times a ki.

Q You say an eighth or a quarter. What is a quarter?

A 8-1/2 ounces.

Q How much is a quarter in terms of a kilo? Is it a quarter-kilo?

A 8-1/2 ounces is a quarter-ki.

Q What is a "ki"?

A 2 pounds 2 ounces.

Q That is a kilo of heroin?

A A kilo of heroin, yes, sir.

Q How many times in this same period from the beginning of August 1972 through approximately December

of 1972 did you give goods to Menstasti?

A Numerous, numerous times.

Q Can you give us a best estimate, Mr. Rossi? Would you say over ten?

A Yes.

Q Over twenty?

A Around there, around twenty times.

Q In what quantity were you giving him heroin on each occasion, generally?

A The smallest quantity was an eighth of a ki.

Q What was the largest quantity?

A To the best of my recollection, a half a ki.

Q How about Dominic from Long Island?

A A ki.

Q Just one transaction?

A I think two transactions, but I remember one transaction for a ki.

Q For a kilo?

A A kilo of heroin.

Q Where did you give him that?

A At my mother's house.

Q Do you know his last name?

A I do not.

Q You mentioned a person by the name of Tony Bugs

Q Mr. Rossi, where were you and Rizziero getting the goods you were delivering to those various people in this period? Again, the period I am talking about is from the beginning of August through December of 1972 or thereabouts.

A Where?

Q From whom?

A Angelo Ricco and Tony Bragiole.

Q Where were the deliveries to you and Rizzieri generally made?

A In the vicinity of the club, in the vicinity of the Magic Carpet, and I believe, to the best of my recollection, a couple of times by the clothing store, Renzo Originals.

Q Where was this clothing store, Mr. Rossi?

A Morris Park Avenue, one or two blocks before the Carvel on the same side of the street as the Carvel.

Q Who were you meeting in Renzo -- how did you put it?

A Renzo Originals.

Q Who were you meeting in Renzo Originals when you went there for these deliveries?

A Angelo Ricco, Tony from Castle Hill Avenue; that is it.

Q Did you have a conversation in this period of time with Angelo Ricco with respect to his interest in that establishment?

THE COURT: With Renzo?

Q Renzo Originals.

A I did.

Q What was said in substance as to that?

A Angelo Ricco told me he was part-owners.

Q Part what?

A Part-owners.

Q You mentioned also a place called the Magic Carpet. What is the Magic Carpet and where is it?

A It's a bar on Morris Park Avenue between White Plains Road and the next cross-street.

Q When you took in the Magic Carpet, did you take inside or outside --

MR. AMOROSA: Withdrawn.

Q I think your testimony was "in the vicinity." Did you take inside or outside the Magic Carpet?

A When I received goods?

Q Yes.

A Outside.

Q Who did you speak to, Mr. Rossi, to arrange these deliveries of heroin to you?

A Tony Bragiole and Angelo Ricco.

Q Where did you speak to these people when these deliveries were arranged?

A At the Rosedale Social Club which is located across the street from the Garden of Roses and at the Magic Carpet.

Q Who else was usually present, if anyone, during these conversations regarding arrangements?

A Charles Indiviglia.

Q Was anybody else usually present?

A Myself and Jimmy Rizzieri.

Q When did Rizzieri meet the Riccos for the first time?

A Sometime in August.

Q Who introduced them?

A I did.

Q Do you recall where that introduction took place?

A To the best of my recollection, at the club across the street from the Garden of Roses.

THE COURT: Can't we just call it the club from now on?

Q In what quantities were you taking from the Riccos in this period, Mr. Rossi? And again, the period I am talking about is from about the beginning of August 1972

through December 1972 or thereabouts.

A A quarter of a kilo, eighth of a kilo, half a kilo and kilo quantity.

Q How many times did you take goods from these people in this period, roughly?

A Numerous.

Q Would you give us a rough estimate?

A Forty, fifty times.

Q What was the largest amount that you took?

A At one time?

Q Yes.

A Two kilos.

Q When was that?

A December 1972.

Q How much money, Mr. Rossi, were you generating in this period from your sales to your own customers?

A Total generation?

Q Yes.

A At least $200,000.

Q What did you do with this $200,000 or thereabouts?

A Paid for the heroin to Tony Bragiole and Angelo Ricco, and the rest me and Jimmy Rizzieri split.

Q How much do you estimate you paid Ricco and Bragiole during this period?

Is that what you are talking about, Mr. Rossi?

THE WITNESS: Yes, your Honor.

Q You also mentioned another place called Reeves.

A Reeves, yes, sir.

Q What was Reeves?

A Reeves Industries is a place that has something to do with films, I believe.

Q Did you know anybody who worked there?

A I did.

Q Who worked there, to your knowledge?

A Angelo Ricco, Tony Bragiole and Charles Indiviglia's brother.

Q How many times did you deliver money at Reeves?

A About three times.

Q Who did you give the money to at Reeves, if you recall?

A To Tony Bragiole and Angelo Ricco.

Q Do you recall how much money you were delivering at Reeves on these two or three occasions?

A To the best of my recollection, 15,000 one time, 15,000 another time, and 10,000 another time.

Q Would you tell us where Reeves is located?

A Reeves is located between First and Second Avenue on 42nd or 43rd Street, somewhere in that vicinity.

when you received cocaine?

A Yes.

Q How much --

THE COURT: You are still talking about August-December of '72?

MR. AMOROSA: Yes, sir.

Q Did you receive a kilo of cocaine?

A Yes.

Q When was that in this time period?

A August 1972.

Q When in August, can you tell us?

A About the middle of August.

Q Would you relate, Mr. Rossi, in your own words, the events leading up to that transaction?

A Myself and Jimmy Rizzieri went to the club and we seen Angelo Ricco and Charlie Poops. Angelo Ricco says that he has a kilo of cocaine that takes about 2 or a 2-1/2, and he can give us a good price on it for 14 to 16 thousand dollars.

Q Let me just interrupt you for a second, Mr. Rossi.

What does it mean when it's said that cocaine takes a 2 or a 2-1/2?

A That's the amount of times you can dilute it.

Q So he meant at that time that you could dilute it

2 or 2-1/2 times?

A Yes, sir.

Q What else was said on that occasion, if anything?

A What I said and what they said?

Q That's right.

A They says, "You can have it for" --

MR. BRACKLEY: I object to what they said, your Honor, unless he knows who said what.

THE COURT: Will you try to tell us who said what you are talking about. You did say Mr. Ricco before. Now, are you still talking about Mr.Ricco or who?

THE WITNESS: Yes, your Honor.

When they approached us with the thing of the cocaine, your Honor --

MR. BRACKLEY: I object to "they."

THE COURT: Two people can't talk at the same time.

A Angelo Ricco says he has a kilo of cocaine. He says it takes a 2, a 2-1/2, and we can have it for 14 to 16 thousand dollars.

THE COURT: Who said the next thing?

THE WITNESS: Me and Jimmy Rizzieri said that we would take the kilo of cocaine.

We took the kilo of cocaine and we brought it to Robert -- no, we didn't bring it to Robert Menstasti. We

brought it to the Throggs Neck section of the Bronx.

Q Did you take the kilo of cocaine during the first conversation?

A No, sir.

Q What I want you to do is relate the events leading up to the time when you received possession of the kilo of cocaine, that is, if you can, tell us the conversations you had with respect to it and what happened in furtherance of the conversations, until you get to the point that you take possession of the kilo of cocaine.

A Myself and Jimmy Rizzieri agreed that we were going to take the kilo of cocaine --

THE COURT: Is there any more conversation then?

THE WITNESS: No, just the price and what it was, your Honor.

THE COURT: Then you broke up?

THE WITNESS: Then we made arrangements when we talked about the price of when we were going to pick it up.

THE COURT: What did you say about that?

THE WITNESS: The following afternoon --

THE COURT: When -- you said you would pick it up the following afternoon?

THE WITNESS: Yes, sir.

THE COURT: All right.

THE WITNESS: We picked it up, myself and Jimmy Rizzieri.

Q Where did you go to pick it up, Mr. Rossi?

A At the club.

Q Did you go inside the club when you first got on the scene the next afternoon?

A To the best of my recollection, yes.

Q Did you go inside alone or with somebody else?

A With Jimmy Rizzieri, to the best of my recollection.

Q Did you meet anyone in the club?

A Yes.

Q Who did you meet with?

A Charles Indiviglia and Angelo Ricco.

Q Was there a conversation in the club?

A Yes.

Q What was said in substance, and, if you can, tell us who said what?

A In substance, they said Angelo -- Angelo Ricco says --

Q If you can, tell us who said it --

THE COURT: He said Angelo Ricco.

MR. AMOROSA: I'm sorry.

A Angelo Ricco says, "We got the ki of cocaine. Go out to the car and we will bring it to you."

Jimmy Rizzieri and myself went out to the car and Angelo Ricco went to get the kilo of cocaine and Charles Indiviglia, to the best of my recollection, handed it to me.

Q What car, do you recall?

A No, sir.

Q Where was it handed to you?

A On the passenger side.

Q Where was Rizzieri at the time?

A On the driver's side.

Q Whose car were you sitting in?

A I don't recall.

Q Do you know where they went to get the cocaine, based on the conversations you had with either one?

A The club.

Q Did there come a time after the initial conversation in the club that day that they left and then came back to meet you outside?

MR. BRACKLEY: I have to object to him leading the witness.

THE COURT: What do you mean by "they"?

MR. AMOROSA: I will withdraw the question, your Honor.

Q Did there come a time that day when they left your

presence, you didn't see where they went?

THE COURT: Why don't you use names, too?

Q That is, Indiviglia and Angelo Ricco.

A Yes.

Q How long were they gone before they --

MR. GOLDBERGER: I have to object.

Why can't he ask him what happened from the point where they met in the club until it was finished?

MR. AMOROSA: I think I am entitled to ask questions the way I want to.

MR. GOLDBERGER: We are getting Mr. Amorosa's testimony and not --

THE COURT: I am satisfied, Mr. Goldberger.

I would prefer if you say what happened next. They were gone for awhile?

THE WITNESS: Your Honor, this is -- we met one day, your Honor, to make --

THE COURT: Calm down, Mr. Rossi. You may not always understand what people are trying to ask you about and that's why you just have to answer the questions that are put.

Now, Mr. Amorosa is trying to find out what happened after you had your talk on the day you had your talk.

Is that right?

MR. AMOROSA: That's right, sir.

THE COURT: After the talk, they left your presence, Mr. Ricco and Mr. Indiviglia; is that right?

THE WITNESS: No. We left, your Honor,and we came back the following day.

THE COURT: All right.

Q The following day is what I'm interested in.

Did you have a conversation inside the club the following day?

A Yes.

Q All right.

Tell us, Mr. Rossi, what was said in that conversation and what happened afterwards.

A They said that "we got the kilo of cocaine."

THE COURT: Wait a minute.

A Angelo Ricco and Charlie Indiviglia said that they got the kilo of cocaine, it cost between -- I don't remember the exact price, between 14 to 16 thousand dollars; the both of them says, that we were to go out in the car and they were going to bring it to us out in the car.

Q What happened after that?

A We went out in the car.

Q And then what happened after that?

A Angelo Ricco and Charles Indiviglia brought us the kilo of cocaine.

Q What was it contained in?

A It's contained in a brown like A & P bag or Pathmark bag, and it wasn't one package.

Q Pardone me?

A It wasn't just one 2-1/2 kis or one whole ki. It was five or six different packages, a quarter of a ki, an eighth of a ki. It was all broken up.

(Continued on next page)

Q What did you and Rizzieri then do with that kilo?

A We brought it to Rizzieri's apartment, which was located in the Throgs Neck section of the Bronx. We got in touch with Robert Menstasti and we gave Robert Menstasti an eighth of cocaine.

Q Do you recall specifically where Rizzieri's apartment was in Throgs Neck?

A Somewhere in the vicinity of the diner, maybe two blocks away.

THE COURT: Which side, theBronx or the Queens side of the bridge?

THE WITNESS: I am talking on Bruckner Boulevard, your Honor.

THE COURT: All right.Bruckner Boulevard.

Q Will you describe his apartment, if you can.

A It was a furnished apartment in the private house. YOu walk in the back yard to get in. The entrance was in the back yard, and it was just one big room with a little kitchen area and a folding bed that opened up, a table and a televis n.

Q After the time you gave ie to Menstasti, did you or Rizzieri have a conversatio with Menstasti with respect to the kilo of cocaine?

A Yes, sir.

Q What was said in that conversation?

A Robert Menstasti brought us the money for the eighth of cocaine, he said -- he says he had a hard time getting rid of it because the quality of the cocaine was very poor and they were paying too high of a price and that we should return it because he could not get rid of it.

Q What happened after the conversation?

A After the conversation, myself and Jimmie Rizzieri made preparations to get in touch with Angelo Ricco and Charles Indiviglia.

Q Where was the kilo of cocaine at that point?

A I believe we left it at Jimmie Rizzieri's apartment in theThrogs Neck section of theBronx.

Q YOu took it back from Menstasti?

A Yes, sir.

Q Did you get in touch with Angelo Ricco and Indiviglia?

A Yes, sir.

Q Where did you get in touch with them?

A At the club.

Q Was there a conversation?

A Yes, sir.

Q Who else was present?

bnb-3 Rossi-direct

A Myself,Jimmie Rizzieri, Angelo Ricco and Charlie Poops, Charles Indiviglia.

Q What was said in substance, and if you can, tell who said it.

A We said that we can't sell it -- myself and Rizzieri, we both said the same thing, that we cannot get rid of it because it is not good, we just sold an eighth and that the quality is not good and we are bringing it back.

Q What was said on the other end, if anything?

A At this particular time, this is when I found out that it was --

MR. BRACKLEY: Objection.

THE COURT: Sustained. Tell us what other people said if anybody said anything.

THE WITNESS: Charles Indiviglia said that he would lower the price, you know, give it to us at a cheaper price if we can get rid of it.

Q What did you say?

A I said, "We don't want it."

Q You jsut said something that you found out something, Mr. Rossi. What did you find out and from whom?

A Well, I was under the impression that the kilo of cocaine belonged to --

MR. GOLDBERGER: Objection.

Q Tell us the basis of your knowledge --

THE COURT: Tell us what it was you found out.

THE WITNESS: That the kilo of cocaine belonged to Charles Indiviqlia.

Q Who told you that?

A Charles Indiviglia.

Q Did there come another time in this period that you received additional cocaine from Charles Indiviglia?

A From August --

Q From August through December, 1972 or thereabouts.

A Yes.

THE COURT: Could you remind him, before you go on to that, Mr. Rossi, when this last incident that you just finished telling us took place again -- when was it?

THE WITNESS: In August, your Honor.

THE COURT: All right.

THE WITNESS: 1972.

THE COURT: Early part, middle?

THE WITNESS: Somewhere around the middle, your Honor, at least towards the middle.

THE COURT: Tell us if there was another time, when the next time was.

THE WITNESS: Another time was when we went

to the club in the Bronx.

Q When was that?

A That was from the end of August to the beginning of December.

Q Can you isolate it better than that? If not, tell us.

A No, sir, I cannot.

Q Tell us what happenedin that transaction.

A Charles Indiviglia gave us a sample of cocaine and we had the sample checked out, myself and Jimmie Rizzieri, and we found out that we couldn't get rid of it because it was too high and it wasn't that good.

Q Tell us another time when he gave you another sample, if he did.

A Yes, sir.

Q How many samples did he give you in this period of August of 1972 or thereabouts to December of 1972?

A Six, five.

Q Did you ever work a transaction with any of it?

A No,sir, I didn't.

Q Did there come a time in this period, Mr. Rossi, when you met a man by the name of John DiSalvo in the Magic Carpet?

A I did.

MR. RICHMAN: I submitted a note to you in relation --

THE COURT: I don't intend to make any statement at this time. I think Mr. Amorosa indicated yesterday there is a limit to the Government's contentions about Blase, and I am perfectly willing to make the statement to that effect to the jury.

MR. RICHMAN: At this point, I would call your Honor's attention to the fact of the possibility of a multiple conspiracy.

THE COURT: Not now.

MR. AMOROSA: We oppose any instruction at this time until we have an opportunity to be heard on it.

THE COURT: I won't do anything at the moment.

(In open court.)

Q Mr. Rossi, I believe you were at that point where you and Rizzieri had returned to the Magic CArpet and had seen something outside?

A Yes.

Q Would you continue from there, please, what happened that evening?

A We returned to the Magic Carpet. Myself with Jimmie Rizzieri -- I gave John DiSalvo the eighth of heroin. He gave Jimmie Rizzieri the money and then he left,

A It is myself and Angelo Ricco behind the bar of the Magic Carpet with George Carrado in the background.

Q Was that the night of the christening?

A Yes, sir.

Q During the party?

A Yes, sir.

Q Was Indiviglia invited to the party?

A Yes, sir.

MR. BRACKLEY: Objection to the leading.

THE COURT: Sustained.

Q Who else was invited to the party?

THE COURT: You don't have to tell us all your friends. Name anybody else connected with this case.

A Charles Indiviglia, Jimmie Rizzieri. To the best of my recollection I think Mr. DiSalvo came too. Tony Bragiole.

THE COURT: Are you saying Mr. Indiviglia came?

MR. MERBERG: Might he be more definite as to Mr. DiSalvo?

A Mr. Indiviglia was invited.

THE COURT: But he didn't come?

THE WITNESS: He came.

THE COURT: What about Mr. DiSalvo?

THE WITNESS: He was there.

2 rkmch Rossi-direct

place in such conversations, would you be good enough to shun the lawyers and the defendants as if they had leprosy until the case is over?

If you need instructions, you could always ask Miss McKeen or the reporter or myself.

DIRECT EXAMINATION CONTINUED

BY MR. AMOROSA:

Q Mr. Rossi, on December 10, 1972, did you owe Bragiole any more of that $5,000?

A What date was that?

Q December 10, 1972.

A No.

Q You paid it off?

A The loan, yes.

Q In this period, did you have a conversation with Bragiole regarding where he was getting the goods?

A Yes.

Q Do you recall where that conversation was?

A Yes.

Q Where was it?

A In the club in the Bronx.

Q Was anybody else present in that conversation, if you recall?

A To the best of my recollection, Angelo Ricco.

Q What was said with respect to where they were getting the goods?

THE COURT: Can you remember when this conversation took place?

THE WITNESS: About three times, your Honor.

THE COURT: All of them at the club?

THE WITNESS: Yes.

THE COURT: In what period were the three times?

THE WITNESS: From September to December of 1972, your Honor.

Q What was said with respect to where he was getting the goods?

A Tony Bragiole said that the goods were coming from Marseilles, French goods.

Q After the christening party in September, did there come a time when you had a conversation with a person by the name of Frank Giacomelli?

A Yes.

Q Is that over the pone or in person?

A In person.

Q Where was the conversation?

A At the Bell Bottom Blues Clothing Store on Morris Park Avenue in the Bronx.

Q What was said, in substance?

A Frank Giacomelli said he had a friend named Frank who has an uncle who knows a guy who wants 2 kilos of heroin.

Q What did you say to him when he said that?

A That I wanted to meet the guy.

MR. JACOBS: Can that answer be read back?

(Record read)

Q Is that your recollection of what he said, Mr. Rossi?

A Yes.

Q After that conversation did you meet anyone in furtherance of it?

A Yes.

Q Who did you meet with?

A Frank's uncle. I believe his name was John.

Q Where did you meet him?

A At Bell Bottom Blues on Morris Park Avenue in the Bronx.

Q Who else was present?

A Myself, Jimmy Rizzieri, Ernie Coralluzzo and Frank Giacomelli.

His brother Anthony could have been there, too.

THE COURT: Whose brother?

THE WITNESS: Frank Giacomelli. They were partners

5 rkmch Rossi-direct

in the clothing store.

Q What did this man say?

A His name was John. He said there is a guy Reynard from Yonkers who was hooked up with Herbie Sperling and they wanted two kis of pure heroin.

Q What did you say in response to that?

A I said I think I would be able to get it.

Q After that, did you meet with anyone in furtherance of this meeting?

A Yes.

Q Who did you meet?

A Tony Bragiole and Angelo Ricco.

Q Do you recall where you met them?

A The Magic Carpet.

Q Do you recall whether anyone else was present?

A Yes.

Q Who was present besides the three of you?

A James Rizzieri.

Q Was there a conversation with regard to this subject matter?

A Yes.

Q What was said, in substance?

A Myself and Mr. Rizzieri told Angelo Ricco and Tony Bragiole --

MR. JACOBS: Objection; unless they were both talking simultaneously, can we find out who said what?

Q Do you recall who said what with respect to this, Mr. Rossi, or don't you recall?

A I recall in general what I said and what Jimmy said, Mr. Rizzieri.

THE COURT: Tell us what you said and what Jimmy said.

THE WITNESS: I said, "There is a guy by the name of Reynard that wants two kis," and Jimmy said, "Yes, we met the guy in Bell Bottom Blues."

I said we were going to charge them $41,000 a ki, and Jimmy said, "Yes, they are going to have the money and all they want to do is test the goods."

And Tony Bragiole and Angelo said that if Herbie Sperling is involved, then there is Sonny Gold, and to watch out for Sonny Gold because he has been in the narcotics business for many years and he is very wise.

Q Was anything said about the quality of the heroin?

A Yes. Tony Bragiole and Angelo Ricco told myself and Jimmy Rizzieri that the heroin was pure and it could be read on a machine.

Q Did you know what either of those persons meant, depending on who said it, when he said that the heroin could

7 rkmch Rossi-direct

be read on a machine?

A You want to know who said it?

Q Do you remember who said it?

A Tony Bragiole said it, and Angelo Ricco said --

Q Do you know what they meant? Did you know at that time what they meant?

MR. MITCHELL: Objection.

THE COURT: Overruled.

A No, sir, I did not.

Q Were any arrangements made at that time?

A Yes, sir.

Q Tell us what was said if arrangements were made at that time.

A We made arrangements for the next day or the day after to pick up 2 kilos of pure heroin.

Q After that, did you meet with anybody who represented himself to be a customer, that is, the people on the other end?

A Yes, sir.

Q Who did you meet with?

A I believe his name was John, and we told John at a pre-arranged date --

MR. JACOBS: I object to "we."

THE COURT: Who met with John?

rkmch 8 Rossi-direct

THE WITNESS: Myself and Jimmy Rizzieri.

THE COURT: Who told it to John?

THE WITNESS: We both did. I said we were going to get the goods and Jimmy Rizzieri said, yes, we were going to get the goods, and I asked him to make sure to have the money there, and Jimmy Rizzieri said, "Are they going to have the money there?", and he said yes, and he said, "Is Jimmy Rizzieri going to bring the goods?", and I said, "Yes, I will go to the apartment when they test the goods to make sure it's good," and to bring the money.

Q Is that the substance of it?

A Yes.

Q Was a meeting arranged after that?

A Yes.

Q When was that to be?

A At the Magic Carpet on Morris Park Avenue.

Q Who was to attend that meeting?

A Myself, Jimmy Rizzieri, Tony Bragiole and Angelo Ricco.

Q Did you meet with those people?

A We did.

Q Was there a conversation?

A Yes.

Q All right, Mr. Rossi. Tell us in your own words

again the substance of the conversation and what happened as a result of the conversation, and if you can, tell us who said what; but, in any case, tell us the substance of what was stated.

A Myself and Jimmy Rizzieri met with Tony Bragiole and Angelo Ricco in the kitchen. Number one --

THE COURT: The kitchen at the Magic Carpet?

THE WITNESS: Yes.

A (Continuing) Number one, they said that they told myself and Jimmy Rizzieri to watch our steps with Sonny Gold and Herbie Sperling.

Number two, Angelo Ricco and Tony Bragiole told myself and Jimmy Rizzieri that the goods were pure because myself and Jimmy Rizzieri said if the goods weren't pure, the people going to test them, they ain't going to take them, and Angelo Ricco said and Tony Bragiole said that the goods are pure and they could read on a machine.

At that time we agreed on a price. We would pay them $28,000 per kilo of heroin, which was a total of $56,000. They said -- Angelo Ricco said and Tony Bragiole said, "Here is the keys to the car. It's parked around the corner from the Magic Carpet," which would be on White Plains Road between Morris Park Avenue and Van Nest, on the left-hand side of the street, to the best of my recollection,

in front of the bar.

Jimmy Rizzieri waited in the car. We left the Magic Carpet with the keys. I got out of the car. I opened up the car that was parked with the keys. Under the seat were the goods.

(Continued on next page)

Q What were the goods packaged in?

A They were packaged in heavy duty plastic bags. There was, to the best of my recollection four half-kilo packages, and the heavy duty bag was in a big brown bag.

Q Tell us again in your own words what happened after that, that is, where you and Rizzieri went, if anywhere.

A After that, myself and Jimmy Rizzieri went to Bell Bottom Blues on Morris Park Avenue. I got out of the car, and to the best of my recollection, I think Jimmy Rizzieri stood in the car, and this guy John got in the car and says that they were going to meet Reynard and bring him the goods.

THE COURT: Did you hear what John said when he was in the car?

THE WITNESS: No, I asked him in the store, your Honor --

THE COURT: Let's go a little slower then.

You got out of the car and Mr. Rizzieri stayed in the car?

THE WITNESS: Yes.

THE COURT: Where did you go when you got out of the car?

THE WITNESS: Into Bell Bottom Blues.

THE COURT: What happened in Bell Bottom Blues?

THE WITNESS: I spoke to -- I believe his name was John. I says, "The goods are in the car." I asked him if the money was there. He says, "Yes, no problem."

He told me that he was going to go with Jimmy somewhere in Yonkers in an apartment, Reynard's apartment, that they were going to test the goods, and that if the goods were pure they were going to release the money.

THE COURT: What happened next?

THE WITNESS: What happened after that, your Honor?

THE COURT: Yes.

THE WITNESS: Maybe an hour, your Honor, maybe a little --

THE COURT: Did you go in the car or did you stay --

THE WITNESS: I stayed at Bell Bottom -- I seen him get in the car and they drove away.

Q Who, Rizzieri?

A Yes.

Q Where did they go? They drove away?

A Yes.

Q Tell us again what happened next. What was the next thing that happened in connection with this transaction?

A We were waiting at Bell Bottom Blues, and maybe an hour later, give or take, there was a phone call.

Jimmy Rizzieri calls me up and he says, "They picked up the goods and I'm counting the money." Meaning the two kis of heroin, and that he was counting the money with him, Reynard and this guy John, the guy that he went there with.

So I says, "Good." I says, "Hurry up and come back to Bell Bottom Blues and bring the money."

Q Tell us what happened after that. What was the next thing that happened?

A After that I got another phone call, maybe fifteen or twenty minutes after the first phone call. Jimmy Rizzieri says that the people just called and they checked the goods and the goods ain't pure, and they are bringing them back.

And I told Jimmy Rizzieri over the phone, "The goods left the apartment?" And he says, yes, the goods left the apartment and he was counting the money.

I says, "When the goods come back, don't let the money leave." I says, "Wait right there. Give us the address because we are coming up."

THE COURT: Who is "we"?

THE WITNESS: Who went up there?

THE COURT: You said, "We are coming up." Who did you mean?

THE WITNESS: Myself, Ernest Coralluzzo, Robert Browning, and I think there was somebody else, your Honor.

Q Were they with you at the time, Mr. Rossi? That is, Coralluzzo, Robert Browning and that somebody else?

A Ernest Coralluzzo was with me in Bell Bottom Blues, but I don't recall if Robert Browning was there or if we called him up because we were going to need hlep.

Q All right.

After that conversation with Rizzieri, the second conversation on the phone, tell us the next thing that you did in connection with this transaction.

A As I says, I don't know if Robert Browning was there or we called him up, but myself, Robert Browning, Ernest Coralluzzo and I think another party, we got hand grenades and pistols and we went up to Yonkers in the apartment.

Q When you got in the apartment, Mr. Rossi, who was there? Why don't you take it and tell us in your own words? Tell us what happened.

A When we got to the partment, the goods, meaning the two kilos of heroin, hadn't returned yet. Jimmy Rizzieri was there with this guy Reynard, with this guy John -- I believe his name is John -- who had set up the deal.

Reynard says, "I can't understand." He says, "These people are honorable people." He says, "The goods

are not pure."

I says, "Well, there is going to be a problem here because I'm responsible for the money." I said, "The goods left the apartment and as far as I'm concerned the deal was consummated." I said, "Why couldn't they test the goods in the apartment?"

Then Ernest Coralluzzo started to talk to Reynard and they knew each other. Then Jimmy Rizzieri says -- there was the bag of money by the kitchen area. He says, "The money is here." He says, "I can't understand it. What went wrong?"

I says, "We will talk about it when the goods come back."

Q Did there come a time when the goods did come back?

A Yes, sir.

Q Who brought them back?

A Jackamine Spada.

THE COURT: How do you spell that?

THE WITNESS: Jack Spada. I believe it's S-p-a-d-a, your Honor.

Q What happened after Jack Spada brought the goods in?

A Jack Spada, Sonny Gold and another big guy entered

the apartment.

Naturally, we had pistols and I figured there was going to be a problem, and Jack Spada puts the goods on the table and he says, "The goods ain't pure. They have been touched."

I says, "That's impossible. The goods got to be pure. I got them on consignment and they can read on the machine."

"What's a machine?"

I says, "I don't know what a machine is." I says, "But the goods are pure."

Q Was anything else said or done with respect to that situation?

A Ernie Coralluzzo started to talk to Reynard and Reynard knew Ernie Coralluzzo's father, Earl, and they says, you know, "We wouldn't do anything dishonorable. Look, the money is here. The fault must have came on your end because the goods aren't pure."

Q What was decided among you, Coralluzzo and Rizzieri after this conversation?

A That we were going to take the goods back.

Q Did there come a time when Spada and his crew left, or did you leave first with your crew?

A To the best of my recollection, I think we left

first and they followed, because when we left downstairs there was Herbie.

Q Herbie who?

A Herbie Sterling.

Q Where was the money when you left the apartment?

A Still in the apartment.

Q Did you have the goods with you?

A Yes, sir.

Q And you went downstairs.

Tell us in your own words, Mr. Rossi, what happened downstairs, who you saw and what was said.

A To the best of my recollection, myself and Ernie and I believe Jimmy Rizzieri, we spoke to Herbie, because he was wearing a hat, I remember, and I don't know what he says. He says the money was there and the goods weren't pure. Very little conversation.

And then there was two cars, because Jimmy had brought his car -- I believe he had brought his car there, and maybe he was using my car. I don't remember which car now. So me and Jimmy went in one car and Ernie, Robert Browing and I think there was somebody else in the other car, and they went to Bell Bottom Blues and myself and Jimmy Rizzieri immediately returned to the Magic Carpet.

Q Did you meet anyone at the Magic Carpet, Mr. Rossi?

A Yes, sir.

Q Who did you meet with?

A Angelo Ricco and Tony Bragiole.

Q Was there a conversation?

A Yes, sir.

Q Where was it in the Magic Carpet, if you recall?

A I think it started at the bar and it ended in the kitchen.

Q What was said, in substance?

A Well, I says to Angelo Ricco and Tony Bragiole that the goods weren't pure. Jimmy Rizzieri says the goods weren't pure, he says, "Because the money was there." He says, "And the people took the goods out and tested the goods and they came back and said the goods weren't pure."

And then I think Tony Bragiole went like this to Angelo, and he says, "You handle it," and Angelo turned around and says, "Youse are responsible for the goods. You took the goods. You have the pay the money."

Q What did you or Rizzieri say?

A We wanted to return the goods, but we kept the goods.

Q How much money did you buy these two kilos for? What was arranged?

A I think around $28,000 a ki.

MR. JACOBS: Your Honor, I hate to interrupt. Could we just try to fix a time for this whole incident?

THE COURT: The night in question, the day in question?

MR. JACOBS: Yes.

THE COURT: I think we may have done it earlier, but will you remind us again about when this took place?

Q When was this again, Mr. Rossi?

A Somewhere in December.

Q Was it --

A After the christening, yes.

THE COURT: About how long after?

THE WITNESS: I really don't know, your Honor. It could have been a week. I'm pretty sure it was before Christmas, your Honor.

Q Mr. Rossi, did you go anywhere the first few days of the year 1973?

A I did.

Q Where did you go?

A Miami Beach, Florida, Fort Lauderdale, Florida, and Nassau, the Bahamas.

Q Who did you go with?

A Myself, Ernie Coralluzzo, his wife and my wife.

Q Where was James Rizzieri when you went?

A Yes, sir.

Q Did there come a time when you returned to New York State?

A Yes, sir.

Q What did you discover upon your return regarding the goods?

MR. JACOBS: Can we fix the time when he returned, your Honor?

THE COURT: When did you return?

THE WITNESS: Second or third week in January. Around January, I don't know, 10th, 12th, give or take a couple of days.

Q What did you discover upon your return?

A When I came back from Florida, I spoke with Jimmy and he says that the goods had dropped or something. They weren't what they were in the beginning.

THE COURT: You mean he used the word "dropped"?

THE WITNESS: He says they weren't as strong as they were when we first got them.

(Continued on next page)

Q What did you discover subsequent to that conversation?

A That the goods were touched.

Q What do you mean when you say "touched"?

A Take something out and put something in.

Q Take what out and put what in?

A Take heroin out and put a dilutant in, mannite, milk sugar, lactose.

Q Did you have a conversation with Rizzieri after you discovered that?

A Yes.

Q Do you recall where it was?

A The Magic Carpet.

Q Do you recall whether anyone else was present?

A Yes.

Q Who else was present?

A Angelo Ricco and Tony Bragiole, myself and Jimmie Rizzieri.

Q Where was it in the Magic Carpet?

A In the kitchen.

Q Can you tell us when this occurred in January?

A Some time when I got back from Florida.

Q How long after you got back from Florida --

A A day -- that we had the conversation with the

Riccos, myself and Jimmie Rizzieri?

Q Right.

A A day or two days.

Q What was said in that conversation, Mr. Rossi?

A Tony Bragiole and Angelo Ricco says that I was responsible for the money. And I says that I ain't responsible for the money, that he -- that Jimmie Rizzieri is just as responsible for the money as I am, because if you give Jimmie Rizzieri heroin when I ain't there, does that mean I am still responsible? So this went back and forth.

Then Jimmie -- then Angelo says, "No, you are responsible." And it went back and forth, you know, like that.

Q How much money was owed to the Riccos at this time?

A I think $26,000, around there.

Q What else did you say, Mr. Rossi, if anything?

A I said that Jimmie was responsible too, Jimmie Rizzieri.

Q Jimmie was responsible for what?

A For the $26,000. I says, "I am responsible for 13,000 and he is responsible for 13,000," I said, "We are both partners, we are both responsible," because

all the weight was always on me.

Q Was anything done by you during that meeting?

A To the best of my recollection, I pulled out a gun on Jimmie Rizzieri.

Q Why did you do that?

A Because he had touched the stuff that was left there.

Q What did you say when you pulled out the gun?

A I says that you're responsible for 13,000 and I'm responsible for 13,000, and it looks like that our partnership is going to come to an end.

Q What was the tone of your voices in the kitchen that evening, Mr. Rossi?

A The evening in question, sir?

Q Yes.

A Loud, yelling.

Q How was the conversation left?

A That I was responsible for the $26,000.

Q Now, did Bragiole leave this conversation right in the middle of it?

A I think he stood for the most -- for most of the conversation, to the best of my recollection.

Q Did he tell Angelo to handle it?

MR. JACOBS: Objection, your Honor, leading.

THE COURT: Sustained.

MR. AMOROSA: Judge, it was already in the record. I apologize.

THE COURT: I don't recall it being in the record as to this meeting. I recall it being in the record as to another meeting.

Q After this occasion in January, Mr. Rossi, did youtake any additional heroin from the Riccos?

A No, sir.

Q Did Rizzieri?

MR. JACOBS: If he knows.

THE COURT: If you know.

A Yes.

Q How do you know?

A He told me.

Q Did you pay any more money after this conversation or argument to the Riccos?

A Yes.

Q When?

A Some time in I believe it was February of 1973.

Q Where did you pay the money?

A At Angelo Ricco's house in the Throgs Neck section of the Bronx.

Q Was this a different house from the one -- or

apartment from the one you testified to previously?

A Yes.

Q Do you know the street this was on?

A I believe Hollywood Avenue.

THE COURT: How much money did you pay?

Go ahead.

Q How much money did you give him at that time?

A Around$13,000, to the best of my recollection.

Q Was anybody else present when that money was given?

A No, sir.

Q Can you recall and can you describe the street, the house and the apartment inside?

A On Hollywood Avenue, going towards Bruckner Boulevard, the house is on the right-hand side off the corner. It is a two-family house. You ring the doorbell, you walk upstairs, as soon as he opens the door you directly see the living-room. There was a bar inthe living-room, to the best of my recollection, and I believe the bedroom was to the left. In other words, you walk this way and that is the living-room and to the left that was the bedroom, to the best of my recollection.

Q Is thatin the vicinity, sir, of St. Raymond's Cemetery?

A Yes, sir. That is in the vicinity of the cemetery.

Q Did you have a conversation with Angelo Ricco at that time with regard' to the other $13,000?

A Yes, sir.

Q YOu had paid 13,000, right?

A Yes, sir.

Q And what was said with respect to the remaining $13,000 on the original $56,000 for the two kis?

A I was still respon sible.

Q What did you say to Angelo --

THE COURT: Who said you were still responsible?

THE WITNESS: Angelo Ricco.

Q What did you say to Angelo Ricco with respect to that?

A I just said yes, and I left.

Q Do you recall seeing Angelo Ricco again after that, Mr. Rossi?

A No, sir.

Q Is today the first time that you have seen him after that?

A To the best of my recollection, yes.

Q Did you see Bragiole any more after that occasion in February?

A Yes, sir.

Q How many times did you see him?

A Two or three times.

Q Subsequent to the time that you terminated your relationnship with the Riccos, did you go on and engage in other narcotics transactions with others?

A Yes, sir.

THE COURT: With any ot hers you mean or others connected with this case?

MR. AMOROSA: Others not connected with this case.

A Yes.

Q Did there come a time in 1973, Mr. Rossi, when you met a person by the name of Peter Mengrone?

A Yes, sir.

Q Did you have a conversation or did you have conversations with Mengrone with respect to narcotics?

A Yes, sir.

Q What if anything did Mengrone tell you in those conversations regarding who he was with, that is, who his source of supply was?

MR.JACOBS: Can we fix a time?

MR. GOLDBERGER: I also have an objection as to the leading, Judge.

bsb-8 Rossi-direct

THE COURT: He said what if anything.

MR. AMOROSA: Your Honor, I am only asking for this particular area of the conversations because otherwise I don't think it is relevant here.

THE COURT: I think you are entitled to ask whether he said anything on that subject. But when did your conversation with Mengrone take place?

THE WITNESS: He was working up in Empire Ford, your Honor, and it was some time in the summertime, May or June of 1973.

Now I was partners with Ernie Coralluzzo and we had met Louie --

THE COURT: We don't need more of your life's history. Can you just tell us what Mengrone said, if he said anything about his sources.

THE WITNESS: Mengrone said, "I know you used to be with Angelo and Tony Brag., and I know you moved a lot of goods fo them. Whatever went down with you and them has nothing to do with me, and I'm getting goods off them. I'm with Tony and Angelo now and, you know, if we could do business we will do business."

Q Mr. Rossi, did you ever speak to Peter Mengrone about your testimony in this court?

THE COURT: I hope we don't have to retry those other cases.

MR. BRACKLEY: I think the Government indicated that the only promise they made -- one of the promises is that he not commit perjury.

He testified against a man named Ripulone in Florida and Ripulone was acquitted. That doesn't mean that Rossi committed perjury in that trial, but there can be a fair inference drawn that he lied about Ripulone. He wasn't charged with perjury after the Ripulone acquittal.

If the Government wants to put him up as a man that is telling the truth because they threatened him with perjury, I think where it is clear these people were acquitted and where he has misstated facts about them, he was never charged with perjury.

THE COURT: If you would bring that out, I would have to strike your inference. There could be ten million reasons why people are acquitted.

MR. BRACKLEY: That is true, but I think the Government must come to the realization at one point where the man has misstated facts with respect to one or two of the people acquitted or convicted and has never yet been charged with perjury --

THE COURT: You have plenty to play with. I don't

think you should go that route, and I would have to stop you.

MR. AMOROSA: We would like the Court to instruct counsel that with respect to Rossi's prior convictions under the law, they are only entitled to go into when, what happened and where it happened, where the conviction was entered, wher the conviction was entered, and what the conviction was, and we have case law authority with respect to that, rather than going into what Mr. Rossi did in the midst of that crime; for instance, did he kick somebody, did he choke somebody, or what he did or what others did at that time.

The rationale for this is, if they treat Mr. Rossi that way, if one of these defendants gets on the witness stand who has an armed robbery conviction, I certainly am not entitled to ask that person whether he pistol-whipped the victim in that case.

MR. BRACKELY: I think Mr. Amorosa tried to indicate by the fact that he tried to shoot a drug pusher, he tried to shoot a robber drug pusher, he was somehow lessening his crime so we have a right to go into what the man does, what his motivation was.

MR. JACOBS: Mr. Amorosa went into many things that were not convictions. He asked Mr. Rossi about all the things he did, armed robberies that he was never convicted

A No, sir.

Q You were using them?

A Yes, sir.

Q And you were a steady cocaine user at one time?

MR. AMOROSA: Objection, unless we have a definition of "steady."

Q All right. Let's clear that up. Mr. Rossi, did you ever use cocaine?

A Yes, sir.

Q Did there come a period of time that you used cocaine more than onccea day?

A Yes, sir.

Q Did there come a period of time that you used cocaine as many as five or six or eight times a day?

A Could have been.

Q Not could have been, Mr. Rossi, do you remember if you did or you didn't?

MR. AMOROSA: What do we have, five, six or eight?

THE COURT: It is not very hard to answer that.

A Yes, I could have.

Q When you used this cocaine what happened to you?

A You want me to -- in my own words?

THE COURT: I take it you mean that?

MR. GOLDBERGER: Yes, Judge. I certainly don't mean the lawyers.

A No.

Q Did you call Anthony Ricco?

A Yes.

Q Anthony Ricco told you he wasn't going to put up any money for your bail, didn't he?

MR. AMOROSA: Objection.

THE COURT: Overruled.

A He says --

Q Did he tell you he was going to put up any money for your bail; yes or no?

MR. AMOROSA: I object. We have best evidence as to this.

THE COURT: I don't follow you.

MR. AMOROSA: The conversation was recorded.

THE COURT: You mean that is better than live testimony of a witness? I don't agree. Particularly not where the credibility of a witness is involved.

Q Did Mr. Ricco tell you that he wouldn't put up any part of that $100,000 bail? Anthony Ricco.

MR. AMOROSA: Objection, your Honor. It's hearsay, in any event.

THE COURT: He is being asked about a conversation that he participated in.

MR. AMOROSA: What Mr. Ricco said to him after his arrest is hearsay in this case.

THE COURT: It is not hearsay for some purposes. It is not hearsay, for example, to indicate whether or not the witness might be affected by what Mr. Ricco said to him.

Q Do you want to answer the question, Mr. Rossi?

THE COURT: It is a simple question.

THE WITNESS: Your Honor, I can't answer it because that was not said on the conversation.

THE COURT Did you ask him whether he would contribute to your bail or help --

THE WITNESS: I asked for help, yes.

THE COURT: Did he say whether he would or he wouldn't?

THE WITNESS: He said -- I believe his words were, "You got some nerve helping me" -- or something like that.

Q The effect was that Mr. Anthony Ricco, who you call Tony Bargiole, did not put up any money for your bail; is that right?

A I had no bail at the time.

Q You had no bail. You were remanded?

A Yes.

Q Do you want to tell the jury in your own words what "remanded" means?

A Remanded means that there is no bail.

THE COURT: You mean the judge would not set a figure.

THE WITNESS: When I violated my probation, they dropped my bail.

THE COURT: Revoked.

THE WITNESS: It was only good for a week or a week and a half, your Honor.

THE COURT: It wouldn't make any difference after that how much money you put up?

THE WITNESS: Right. I could never get out of jail.

Q Is one of the reasons that eventually a bail as much as $100,000 was set because there was a plot by you to assassinate the undercover police office that was involved in the case?

A That is not correct.

Q Do you remember a bail hearing with a Mr. Larry Herman from the District Attorney's office?

A I do, sir.

Q You never had a plot or in mind to kill the

undercover police officer that was involved; is that right?

A I did --

MR. AMOROSA: Objection. Asked and answered.

THE COURT: Sustained.

Q If you would have made that hundred thousand dollars' bail, Mr. Rossi, you would have been a fugitive, wouldn't you?

A I would have.

Q You would have run away and not answered those charges; isn't that correct?

A I would have.

Q Because you didn't want to go to jail, did you?

A That's correct.

Q And because you felt that was a case you couldn't beat; is that right?

A That's correct.

Q That was a case that some judge eventually was going to stand there and sentence you on; is that right?

MR. AMOROSA: Objection. As if the judges in this case will not sentence this man.

THE COURT: Overruled.

Q Do you want to answer the question?

A Repeat the question, please.

(Record read)

to be asking you?

THE WITNESS: That --

THE COURT: He ie asking you whether you ever said that back in March, 1973, you couldn't do better than an eighth of a kilo, did you ever say that?

THE WITNESS: I don't think I did.

THE COURT: All right.

(continued on next page.)

End 4A

MR. GOLDBERGER: Referring to Page 427 of United States v. Coralluzzo.

Q This is you on cross-examination, Mr. Rossi:

"Q Now, in March of 1973, prior to the robbery" --

THE COURT: Mr. Goldberger, would you mind putting this in the following fashion, reading these questions and answers, and asking him whether or not he made the answers.

MR. GOLDBERG . Yes, your HOnor.

Q Mr. Rossi, did you make the following -- the answers to the following questions:

"Q Now, in March of 1973, prior to the robbery, in what weight drugs were you dealing, quarters, halves, kilos, what?

"A Small weight.

"Q What is 'small weight'?

"A Two ounces, three ounces.

"Q You hadn't dealt in anything above an eighth of a ki?

"A I may have attempted to do so, but it never happened."

Did you make those answers to those questions in United States v. Coralluzzo on those pages?

A Yes, I did.

Q Well, is it true?

A Concerning heroin or cocaine?

Q What did you think we were referring to?

A In United States of America v. Coralluzzo is my cocaine transactions, sir.

Q You mean there was no heroin discussed in United States v. Coralluzzo?

A Yes, there was heroin discussed.

Q You were going to pull 50 kilos of heroin for Frank Mathews in United States v. Coralluzzo, weren't you?

A Yes.

MR. AMOROSA: I object. There may be some confusion in the transcript.

MR. GOLDBERGER: Let Mr. Amorosa straighten it out on redirect, your Honor.

THE COURT: Oh, no. May I see the transcript?

MR. GOLDBERGER: You certainly may, your HOnor. It starts at the bottom, your Honor (handing to the Court).

THE COURT: All right. I will return it to you.

Q Mr. Rossi, my question to you is, were the answers that you made then true, that you had attempted to deal in more than an eighth but you never did, in March of '73?

MR. AMOROSA: In March of 1973?

MR. GOLDBERGER: That was the question.

A What was the subject? I can't answer.

and you went into one commode and he went into another commode and the heroin was passed underneath the commode?

A Yes, sir.

Q Was Freddie Blase in the bathroom at the time?

A To the best of my recollection, no, sir.

Q It is a small bathroom, two commodes and a urinal?

A Yes,sir.

Q How many other people were in the bathroom at the time?

A I don't know if there was anyone.

Q Excuse me?

A I don't know if any other people were in the bathroom.

Q If there was none in the bathroom, you wouldn't have had to go in the commodes, would you?

A Yes, sir.

Q YOu are saying then that you don't remember if there was anybody else in the bathroom or not?

A Yes,sir.

Q And you are saying that you went into one commode,Angelo went into the other commode, and he passed it underneath?

A Yes, sir.

BEST COPY AVAILABLE

bsb-4 Rossi-cross

Q This is because narcotics transactions are secret by their very nature because they are illegal, is that right?

A Yes,sir.

Q All right. Didn't you testify to a transaction in which Mr. Ricco and Mr. Indiviglia passed you some cocaine, one kilo of cocaine?

MR. AMOROSA: Angelo Ricco?

Q Angelo Ricco.

A Yes,sir.

Q Did you or did you not testify that Mr. Ricco and Mr. Indiviglia passed this cocaine to you as a passenger in a vehicle, through the window, the open window of the car?

A Yes, sir.

Q And the car was parked on a street corner?

A Yes, sir.

Q Where was the street?

A In front of the club.

Q In front of theRosedale Social Club?

A Yes, sir.

Q What time of day or night was it?

A I think it was the afternoon.

Q So it was daylight?

Q It is dangerous from more than one aspect? It is dangerous in the sense you could be caught and arrested as you were; is that correct?

A That is one of the aspects, yes.

Q It is dangerous also because there are physical dangers involved in being in the narcotics business?

A That is correct.

Q There are numerous people in it that have been killed that have been in the narcotics business, in fights over money or narcotics; isn't that correct?

A That is correct.

Q You are aware of many of those instances, aren't you?

A Some; not many.

Q And you knew at the time in 1972 that you were in a dangerous business, didn't you?

A Yes.

Q I assume that your child, this child that you had that was christened in 1972, was important to you?

A Yes.

Q A human being that you care and love; is that correct?

A That is correct.

Q And you chose to ask a man to be the godfather of

this child, you chose Angelo Ricco; is that correct?

A That is correct.

Q And being a godfather, especially among Italians, is an important thing; isn't that correct? A godfather?

A Yes, that is correct.

Q And the godfather's role, should something happen to the father, is to take care of the child; isn't that right?

A That is correct.

Q And you would choose somebody that would guide your child morally and take care of him in a proper manner; isn't that right?

A That is correct.

Q You don't choose, Mr. Rossi, somebody else that is in the drug business then, do you?

MR. AMOROSA: Objection.

THE COURT: Sustained. That is argument for summation.

Q Mr. Rossi, you chose Mr. Ricco because he was a legitimate person with a legitimate job, so that if something happened to you, he could take care of your baby; isn't that true?

A Was that one of my reasons for choosing him?

THE COURT: That is the question.

THE WITNESS: I don't know.

Q In any event, you wouldn't have any knowledge with respect to that, is that correct, sir?

THE COURT: September of 1973?

MR. BRACKLEY: That is correct.

A I don't remember. No.

Q You have never testified or anything that you saw Mr. Indiviglia with any heroin in 1973, is that correct, sir?

A I don't remember.

Q You don't remember? Do you believe you testified to that before the grand jury that handed down the indictment in this case?

THE COURT: Are you referring to overt act 21?

MR. BRACKLEY: Yes. It is very simple. I think the answer should be no, and we could move on to the next thing.

Q As a matter of fact, sir, you were not involved with either Mr. Ricco or Mr. Indiviglia or anybody from that part of this case in 1973 of September, were you, sir?

A Yes, I was.

Q With whom?

A Who was I involved with in September of 1973?

Q Were you involved with Mr. Indiviglia?

A Yes.

Q Are you part of a so-called transaction of narcotics in 1973?

MR. AMOROSA: September?

Q September of 1973.

THE COURT: You will have to specify whatyou are referring to, Mr.Brackley?

MR. BRACKLEY: The overt act in the indictment.

THE COURT: Over Act 21 does not refer to Mr. Rossi. It refers to Mr. Indiviglia and Mr. Ricco only.

Q Do you have any knowledge with respect to that that you testified about?

A To September 1973?

Q Yes.

THE COURT: Let me show you what he is talking about. That is Overt Act 21. Do you know anything about the material stated in Overt Act 21, which will be read to the jury at a later time?

THE WITNESS: That is the first time I have seen that.

THE COURT: Let me read that to the jury.

"Overt Act 21, part of the conspiracy count reads that on or about September 1973, Charles Indiviglia purchased approximately one-quarter kilogram of heroin from defendant

Anthony Ricco, also known as Tony Bragiole, in the vicinity of the Magic Carpet, Bronx, New York."

I take it Mr.Brackley is asking you whether you were involved in or know anything about that allegation.

THE WITNESS: To the best of my recollection, no, not in September of 1973.

End 4B

(continued on next page.)

MR. BRACKLEY: Would you kindly, Judge, show him Count 2, I would like to see if that is the count that he is talking about in this case.

MR. AMOROSA: I object to that. That is not a proper way to ask a question.

THE COURT: If you want to ask him, get your copy of the indictment and read it to him and ask him.

Q Do you claim knowledge of a cocaine transaction either in August or September of 1972 involving Mr. Indiviglia?

A Yes.

Q In other words, you state that in 1972 you were involved in cocaine, is that correct?

A August, yes.

Q And you knew all about cocaine?

A I knew about cocaine?

THE COURT: What do you mean know all about cocaine?

Q Were you trafficking in cocaine in 1972?

A On that particular instance, yes.

Q At any time p ior to that?

A I think one time prior to that.

Q And how much prior?

A March of 1972.

Q And did you make a transaction with respect to that cocaine in August or July of 1972?

A You mean the cocaine from March to August?

Q Yes.

A It wasn't the same cocaine, I don't think.

Q Well, sir, you say you are having two cocaine transactions in the summer of 1972, or just one?

A To the best of my recollection, one in the summer of 1972.

Q Then you would not have sold any cocaine to a Fred Wolfert in the summer of 1972?

A The summer of 1971.

THE COURT: Wait a minute.

Q 1972, summer months of 1972.

THE COURT: Did you sell any cocaine to Fred Wolfert?

THE WITNESS: I did.

THE COURT: In the summer of 1972?

THE WITNESS: No.

THE COURT: He is asking you whether you did it to Fred Wolfert in the summer of 1972.

THE WITNESS: Yes.

THE COURT: If you did it to Fred Wolfert in the summer of 1971 or some other time --

bsb-3 Rossi-cross

THE WITNESS: I didn't sell to Fred Wolfert in the summer of 1972, no.

Q The only cocaine that you would have had in the summer of 1972 would be the cocaine you claim that Charles Indiviglia had given to you for a short period of time and then you returned it because you couldn 't sell it or it wasn't good or something like that, is that right?

A That's right.

Q That's it. Now, when you come in to testify in a courtroom like this, I believe Mr. Goldberger had asked you, you are actually interviewed by many people before you even come here, isn't that right?

A In --

MR. AMOROSA: Objection, unless we can have it specified as to which case.

THE COURT: Have you been interviewed by a number of people with regard to this case -- not only in regard to this case, this case or the subject matter of this case before you came in here?

THE WITNESS: The people that I was interviewed by about this case was Mr. Amorosa.

THE COURT: Only?

Q When you say by Mr. Amorosa only are you

saying that none of the -- let's step back a little. When you become an informer, as you say that you are, does any agent from the Federal Government come down, as I think you stated they do --

THE COURT: You are putting it in terms of usual procedure. Ask him what happened.

Q Do you recall, sir, ever being interviewed with respect to your alleged narcotics activities?

A Yes, sir, I do.

Q And at the time were you being interviewed with respect to your alleged narcotics interests, if you had any at all, you were doing that to sort of help yourself, is that correct?

A That's correct.

Q But at that time you didn't know whether or not anything could be done for you, is that right?

A That's correct.

Q So at that time you would have been telling as much as you know about as many people as you know, any particular opportunity that you would have to do it, is that correct?

A That's correct.

Q So you wouldn't have any reason not to mention somebody, if you knew something about a person?

A Unless I forget.

Q Unless you had forgotten?

A Yes, sir.

Q Well, sir, do you ever recall in any statement that you had ever given to anybody that you had a transaction with Mr. Indiviglia in March of -- in July of 19 -- or mid-August of 1972, in which he carried out bags of cocaine to a car and handed themto you, did you ever tell that to any agent?

A That he carried bags of cocaine?

Q Yes.

A More than one bag?

Q Carried in a shopping bag.

A Now it is a shopping bag.

Q What did you say it was in your testimony?

A A brown A&P bag.

Q A brown bag, right?

A A brown bag, yes.

Q Did you ever tell that to an agent, sir?

MR. AMOROSA: Your Honor, I just want to ask whether agents include Assistants or just DEA agents.

THE COURT: Would you --

MR. BRACKLEY: Let me come back, Judge.

THE COURT: Let's get the answer to that. Do

you recall making a statement to either a DEA agent or an Assistant U. S.Attorney, let's say, before the indictment?

THE WITNESS: I don't remember.

MR. BRACKLEY: May I have marked for identification 3501-33.

THE CLERK: Defendant Indiviglia Exhibit A was marked for identification.

MR. AMOROSA: Is there a pending question?

THE COURT: No.

Q Now, Mr. Rossi, do you recall whether or not on March 18 of 1974, you had a conversation with a special agent, James P.Bell, and a special agent, Philip Hayward, and a special agent, Fred Ricklow?

A Yes, sir.

Q Would you say, sir, that that was -- do you recall where that conversation took place?

A Foley Square Courthouse.

Q Do you recall, sir, whether or not anything was being recorded with respect to whatyou were saying?

A No.

Q You don't recall. Do you recall, sir, whether or not they were writing down anything, any of the things that you were saying?

A They could have wrote it down. I don't know.

rkb-1 438

United States of America

vs. 75 Cr. 411

Angelo Ricco, et al.

New York, New York.
January 8, 1976 - 10:00 A.M.

(Trial resumed.)

(In open court; jury present.)

A L B E R T R O S S I resumed.

THE COURT: Mr.Brackley.

CROSS-EXAMINATION (continued)

BY MR. BRACKLEY:

Q Mr.Rossi,yesterday we were discussing the time in your life when you became an informant and you began to speak to some special agents of the Drug Enforcement Agencies some time in March of 1974, is that correct?

A That is correct.

Q At that time you had been in custody in a Bronx court case?

A When I first started to talk, was I in custody?

Q Yes.

A I was at the Manhattan House of Detention.

Q Was that the Bronx case?

A The case in the special prosecutor's office.

Q That was the case you had $100,000 bail?

A Yes.

Q And that was the case that came some time in the beginning of 1974?

A When I got arrested?

Q Yes.

A Yes, January of '74.

Q So with all of the hundreds of thousands of dollars here and all of the robberies there and all of the associations over at the other place and the trips to Puerto Rico, you couldn't even get bail to get out of that case?

A That is correct.

Q When you began to cooperate, was that to get out of jail in some manner and in some form?

A To help myself, yes.

Q Did you read yesterday Exhibit A for Indiviglia with respect to the details of your so-called narcotics involvement when you first spoke to the agents on February 28 and March 4, 1974? Did you look through it?

A Yes, I am just glancing at the last page.

Q That is a four-page report containing some eight paragraphs?

A That is correct.

Q In any of those eight paragraphs, do you detail any narcotics --

THE COURT: Don't say do you detail. I assume he didn't prepare the document.

Q Is the document a fair and accurate summary of the things you are alleged to have said to the agents on February or March, February 28 and March 4, 1974?

A Could you repeat the question?

Q Is that a fair and accurate representation --

THE COURT: I think that question ought to be broken down into four parts.

Is what is contained in that a fair report of what you told the agents?

THE WITNESS: No, your Honor.

Q Did you leave anything out?

THE COURT: Did you or did they?

Q Did they?

THE COURT: Does that report omit anything you told the agents?

MR. BRACKLEY: Let me clear it up.

Q In the report, does it mention any narcotics transaction you are alleged --

THE COURT: I will sustain objection to that.

If you want to find out what he told the agents, call the agents.

Q I believe yesterday you stated you did not recall whether you told the agents at that time about any specific narcotics transaction you had with Indiviglia, either in the seafood restaurant or in theRoseland Avenue Club, or any other narcotics transactions, is that right?

MR. AMOROSA: Objection as to the form of the question. It should be rephrased.

THE COURT: Overruled. He is just asking him if he said that yesterday or didn't he say that yesterday.

A That is correct.

Q Did you look through the report?

A Yes.

Q Do you now recall whether or not you told the agents any specific details of any narcotics transactions you allege you ever had with Charles Indiviglia?

A At that particular time?

Q Yes.

A No.

Q In the report, is it there?

THE COURT: Sustained. We are not going into what is in the report.

If you want the jury to know, it will have to be put into evidence and witnesses will have to be called.

Q Is there evidence with respect to a transaction in that report?

MR. AMOROSA: Objection.

THE COURT:Sustained.

You can ask him if he told the agents.

Q Did you tell the agents?

MR. AMOROSA: Objection. Tell them what?

Q Any specific details of any narcotics transactions you are supposed to have had with Charles Indiviglia in the seafood house or anywhere else in theBronx or at any other time?

MR. AMOROSA: At this meeting?

MR. BRACKLEY: At that meeting.

A No.

Q Now, sir, did you see the agents again?

A Yes.

Q Was it around March 27, if you can recall?

A Somewhere in March, I believe.

MR. BRACKLEY: May I have this marked for identification.

xxx (Defendant sndiviglia Exhibit B was marked for identification.)

MR. AMOROSA: May I see that to determine the 3500 number?

THE COURT: Yes.

MR. AMOROSA: It is 3501-35.

Q Mr.Rossi, I ask you if you could look through this exhibit and the same question, whether or not it is a fair and accurate representation of the things that you were detailing to the Federal agents about your narcotics activities?

MR. AMOROSA: I object to the reference that he was detailing. There is no proof in this record at this time that he was detailing anything to the agents.

THE COURT: Let's use a different word.

Is it a fair representation of what you told them?

Incidentally, Mr.Brackley, the material you are referring to is material that has been given to you by the Government?

MR. BRACKLEY: That is correct.

THE COURT: Ladies and gentlemen of the jury, the law requir es that the Government, at the end of a witness' direct testimony, must furnish defense counsel with all of the material the Government may have with relation to prior statements of that witness. That is

the origin of this material.

What is the date of this exhibit?

MR. BRACKLEY: I believe the 27th of March, 1974.

(Pause.)

Q Have you read the report?

A Yes.

Q Is that a fair and accurate representation of what you told the agents?

THE COURT: On that occasion?

A Substantially.

Q Do you have a recollection after reading that report whether or not you ever told the agents on that occasion whether or not you ever had a narcotics transaction with Mr. Indiviglia in the Bronx seafood house, or a cocaine transaction in 1972 or any other narcotics transactions with Mr. Indiviglia?

A On this particular date, I do not believe so.

Q This particular page?

THE COURT: This particular date, he said.

Q How many pages is that particular report?

THE COURT: Never mind that.

MR. AMOROSA: If he wants to offer it, he can offer it.

THE COURT: Right.

MR. JACOBS: I object to the statement of the prosecutor.

THE COURT: Overruled.

MR. BRACKLEY: May I have this marked?

MR. AMOROSA: 3501-25.

xx (Defendant Indiviglia Exhibit C was marked for identification.)

Q Sir, would you kindly read the first paragraph? You may read the whole thing if you want.

Tell us whether or not that is a fair and accurate representation of anything you said to any Federal agents with respect to your Bronx seafood house narcotics transaction.

THE COURT: On the occasion of that report?

MR. BRACKLEY: That is April 8, 1975.

MR. AMOROSA: That is the date of the report.

THE COURT: The occasion referred to in the report.

MR. AMOROSA: There is no occasion referred to in this particular report.

MR. JACOBS: Objection.

MR. GOLDBERGER: Objection.

MR. AMOROSA: I ask your Honor to view the report.

THE COURT: I will look at it.

Don't answer the question until I look at it.

(Pause.)

I think the question should be revised to read as follows:

Does Paragraph 1 fairly represent the statements which you had made to the agents about your Bronx --whatever it is called -- seafood restaurant up to the time of this, and the date of the report is April 8, 1973?

THE WITNESS: In other words, just the first paragraph, your Honor?

THE COURT: That is all Mr.Brackley seems to be asking you about.

A I remember saying something like this on this date,yes.

Q Do you recall, after reading the paragraph, whether or not you said that Charles Indiviglia had any kind of a narcotics transaction with you on that particular incident thatyou are referring to in your report?

MR. AMOROSA: Objection.

THE COURT: There is no particular incident referred to as I see it.

Sustained.

Q Do you recall whether or not you mentioned

any incident with respect to Charles Indiviglia with respect to your Bronx seafood house to the agent who was taking that information?

MR. AMOROSA: Objection. If he asked when, I wouldn't have an objection.

Q When you spoke to the agent who made the report.

THE COURT: Mr.Brackley, you know he spoke to him on a nunber of occasions. I will have to sustain the objection.

If you want to ask him whether he recalls he mentionned Mr. Indiviglia in connection with the seafood restaurant at any time up to April 8, 1975, to an agent, I will allow that question.

End 1A

/76 1b

1 rkmch Rossi-cross

Q After reading the report, have you refreshed your recollection, sir?

THE COURT: He hasn't said his recollection needed refreshing.

MR. AMOROSA: Your Honor --

THE COURT: Just a minute. Yes, this is getting to be a circus.

The question, Mr. Rossi, at any time up to April 8, 1975 -- do you recall whether up to April 8, 1975, you at any time told any of the agents about a transaction with Mr. Indiviglia that had anything to do with the seafood restaurant?

THE WITNESS: I do not recall.

Q Now, reading the report that refers to the seafood house --

MR. AMOROSA: Objection.

THE COURT: Sustained.

Mr. Brackley, no further references to the subject matter of the report.

MR. BRACKLEY: If he does not recall, may I ask if the report refreshes his recollection?

THE COURT: Yes, but you can't tell the jury what is in the report. Either put the evidence in or don't put it in.

Q Does the report refresh your recollection whether or not you did mention Mr. Indiviglia with respect to any narcotics transaction in your seafood restaurant?

MR. AMOROSA: Objection.

THE COURT: The question is whether the report refreshes your recollection.

A It does not.

Q Now, sir, can you recall --

MR. BRACKLEY: May I have this marked for identification?

(Defendant Indiviglia's Exhibit D marked for identification.)

MR. AMOROSA: This is 3501-26.

Q Again, if you want to save time, you can look at just Paragraph 1. or read the whole thing.

THE COURT: Mr. Amorosa, may I read your copy?

MR. AMOROSA: Yes, sir.

Q Do you recall ever talking to the agents about your activities in the summer months of 1972 with respect to narcotics and with respect to your robbery of this Fred Wolfert?

THE COURT: Ever?

MR. BRACKLEY: Yes.

MR. AMOROSA: Talking to the agents in 1972.

THE COURT: About his activities in the summer of 1972, but ever talking to them about it.

MR. BRACKLEY: Yes.

THE COURT: Up to today?

A Yes.

Q Is the paragraph in the exhibit a fair and accurate representation of what you said with respect to those activities?

THE COURT: Up to the date of the report, which is April 8, 1975?

MR. BRACKLEY: That is correct.

A Not completely accurate.

THE COURT: You mean by that what is there is accurate, but it doesn't tell everything you said?

THE WITNESS: Yes.

Q Did you say that you had any transaction with Charles Indiviglia during the summer months of 1972 and they didn't put it down?

MR. AMOROSA: Objection.

THE COURT: Sustained.

You can ask the first part of the question.

Did you tell them, through April 8, 1975, that you had any transaction with Indiviglia?

THE WITNESS: I don't recall.

Q After reading the report, do you have a recollection now whether you ever mentioned the man's name --

THE COURT: Don't fudge it up. It isn't "ever"; it's up to April 9, 1975.

A No, I don't recall.

Q Would it be fair to say that sometime in 1973 you began to traffic, as you call it, in cocaine?

A That is correct.

Q Did you ever have any conversations with the agents in which they would question you about who you were involved with with respect to cocaine?

A To the best of my recollection, yes.

MR. BRACKLEY: May I mark 3501-46 for identification.

(Defendant Indiviglia's Exhibit E marked for identification.)

Q Did you ever have a discussion with the agents, I believe the date of that report is May 31st --

MR. AMOROSA: Objection to anything in the contents of the exhibit he handed the witness. There is not even a pending question as to whether or not it refreshes his recollection.

He should put his questions --

THE COURT: Don't tell me how he should put his

questions. You objected.

I will allow him to ask if he wishes to, whether up to date, whatever the date is of that report, any of those conversations took place.

Q What date is that?

A May 3, 1974.

Q Did you have a discussion with federal agents in which you gave them the names and associations of people who you were dealing with in cocaine?

THE COURT Put aside the exhibit. Ask your question, Mr. Brackley.

Q Did you ever have a conversation with the special agents with respect to who you were using as sources for your cocaine?

A On numerous occasions.

Q Did you give them the names?

A I gave them a lot of names, yes.

Q Does that report reflect the name --

THE COURT: Sustained.

Mr. Brackley, as an experienced trial lawyer, you know as well as I do you can't ask a witness about an exhibit which is not in evidence, and if you do it again I will make you terminate your cross-examination.

MR. BRACKLEY: I think I have a right to ask him

whether or not Mr. Indiviglia's name --

THE COURT: No, you do not.

Q Did you give, on May 31, 1974, the name of Charles Indiviglia to any agent with respect to a cocaine source that you had?

THE COURT: On that day or up to that date?

MR. BRACKELY: On that date, up to the date on the report.

MR. AMOROSA: Objection.

THE COURT: The jury will disregard all references to these reports. Mr. Brackley can either move to have them put in evidence, in which case a ruling will be made and you can see them, and if they do not go into evidence, you disregard these reports, ladies and gentlemen.

MR. BRACKLEY: But not the testimony.

THE COURT: Not the testimony.

MR. BRACKLEY: May he read the report before he answers the question?

THE COURT: He can read the report if he asks to read the report. He is not required to read the report.

Q Do you know, sir, whether or not in the lists of names that you had given the agents, Mr. Indiviglia's name was mentioned by you?

THE COURT: Up to or through May 31, 1974.

A Was his name ever mentioned by me?

Q With respect to your sources of cocaine with respect to the agents?

THE COURT: Do you understand the question?

THE WITNESS: From the first time I was cooperating up to now?

Q With respect to the sources of cocaine, which is the subject matter of that report.

MR. AMOROSA: Objection.

THE COURT: Sustained.

The jury will disregard the remark again.

Mr. Rossi, I think the question is this, and it is permissible:

Did you, up through May 31, 1974, mention to the agents Mr. Indiviglia's name as a source of cocaine?

Is that what you are trying to ask?

MR. BRACKLEY: Yes.

A I could have.

Q Now, will you look at the report and tell us whether or not it refreshes your recollection as to whether or not you did.

(Pause)

MR. AMOROSA: I believe the witness is ready to answer.

Q Is that report a fair and accurate representation of what you said to the agent with respect to your supplies of cocaine?

MR. AMOROSA: I object to the question. It wasn't the same as the pending question.

MR. BRACKLEY: I withdraw the first because I can't ask the first without the second.

Q Is that a fair and accurate representation of what you told the agents?

MR. AMOROSA: When?

Q When you told it to him.

MR. AMOROSA: Objection.

THE COURT: I will allow this question:

Is it a fair and accurate representation of what it talks about?

THE WITNESS: Not to the T.

Q Does it now refresh your recollection whether you ever mentioned the name of Charles Indiviglia?

THE COURT: Through May 31, 1974.

A It does not refresh my recollection.

Q Did there come a time in August of 1974 where you spoke to a special agent of the FBI by the name of Rossmer or Mr. Enterlin and some New York City policemen by the name of Kelly and Detective Snipe?

A I could have.

Q Now, do you recall --

MR. BRACKLEY: May I show the exhibit to the witness, Judge?

MR. AMOROSA: I object to the procedure again. There is not a pending question with respect to the exhibit.

THE COURT: He can give him the exhibit.

Now will you ask a question?

Q You have spoken up to this point, as you've testified, to agents of the DEA; is that correct?

A. That is correct.

Q Now, in August, some other agents are coming down to talk to you with respect to your so-called activities; is that right?

THE COURT: As of what date?

Q As of August 8, 1974, which is about three or four months later.

THE COURT: Is that correct?

THE WITNESS: That is correct.

Q Now, do you recognize the names Rossmer or Enterlin as anybody you spoke to, and Pykett?

THE COURT: Would you give me that report?

You can ask him the names independently without reports in front of him.

Q Do you recall now who you were talking to then?

A No.

Q Do you remember the incident at all?

A It doesn't refresh my recollection.

Q Would you then read through the exhibit and tell us whether it refreshes your recollection as to whether you spoke to them and if what is in there is a fair and accurate representation of what you said?

MR. AMOROSA: I object to the form of the question. There are two questions.

THE COURT: Overruled.

(Pause)

THE COURT: Have you read the document?

(Mr. Mitchell enters the courtroom.)

THE WITNESS: Yes, your Honor.

Q Did you, on August 8, 1974, tell any of those agents that you ever had a narcotics transaction with Mr. Indiviglia, either in the seafood restaurant in the Bronx or anywhere else?

A I do not remember.

Q After reading the report, does it refresh your recollection whether you ever --

THE COURT: Apparently it doesn't, because he had read the report at the time he answered the question.

Q Did you again talk to those agents on August 15,

1974?

A I could have.

MR. BRACKLEY: May I show the witness F-2 for identification?

THE COURT: Yes.

Q Would you kindly look through that, sir, and tell us whether or not that refreshes your recollection whether or not you had another interview with the same people with respect to your alleged narcotics activities?

MR. AMOROSA: I object to the form of the question. No foundation was laid for it.

THE COURT: I don't understand why not. He asked him if he met with the people on the 15th of August. The man said he could have, which implies he doesn't know, so he is giving him this to find out whether it refreshes his recollection if he did.

You don't have to read the whole thing to be able to tell us whether it refreshes your recollection; just the beginning of it.

THE WITNESS: It does not, your Honor. It does not refresh my recollection.

Q So you don't have any recollection at all of being interviewed in August -- on August 15, 1974; is that correct?

MR. AMOROSA: The question was August 15, 1974, a

specific day?

THE COURT: That's right.

Q Is that right?

A I have recollections of being interviewed, and I'm not saying I wasn't interviewed on the above date --

Q But you don't have any recollection --

THE COURT: What are you saying?

THE WITNESS: He's asking me -- he's asking me if I mentioned Charles Indiviglia's name.

THE COURT: He is not asking you that yet. He is asking you whether you remember being interviewed by those people on August 15, 1974.

THE WITNESS: I could have been, yes.

Q Now, after reading the report that's right in front of you, does it refresh your recollection as to whether or not you actually were interviewed by these agents?

THE COURT: On that day; on or about that day.

A It does not refresh my recollection.

Q Did you, on August 15, 1974, ever tell anyone that was talking to you that you ever had a narcotics transaction with Mr. Indiviglia in the Bronx or anywhere else at any time or anywhere?

MR. AMOROSA: We are talking about this one day,

August 15, 1974?

MR. BRACKLEY: That is correct.

THE COURT: You don't have to pop up every time, Mr. Amorosa. That question is clear.

A I do not remember.

Q Do you recall five days later speaking again to the same agents on August 20, 1974?

MR. BRACKLEY: May I give this to the witness, Judge?

THE COURT: Yes. F-3.

Without looking at it, do you recall on or about the 20th of August being interviewed by the people we have been talking about?

THE WITNESS: I recall being interviewed, yes.

THE COURT: What is it you don't recall?

THE WITNESS: I don't recall which agency interviewed me or what it was about.

Q You don't even recall what it was about?

THE COURT: Do you want to look at the exhibit to see if it refreshes your recollection?

THE WITNESS: Yes.

THE COURT: All right.

(Pause)

THE COURT: Have you read enough to know whether

it refreshes your recollection -- not?

THE WITNESS: It refreshes my recollection that I spoke to them.

THE COURT: All right.

Q And does it refresh your recollection about --

THE COURT: Wait a minute. That is all that he was unclear about. Ask him the next question.

Q Do you know what you spoke to them about?

A According to this report, yes.

THE COURT: Don't tell us according to the report. The question we are asking is what you remember.

Q Yes or no.

THE COURT: Tell us what you remember. You are entitled to look at that if it helps you to remember, but only tell us what you remember. Anybody can tell us what is in the report.

THE WITNESS: I remember speaking to them.

THE COURT: Do you remember what you spoke to them about?

THE WITNESS: Yes, about the people I associated with.

THE COURT: All right, Mr. Brackley.

Q Do you remember on that day whether you ever told them anything about any narcotics transaction you claim that

you ever had with Charles Indiviglia?

A I do not remember.

Q You do not remember?

A No.

Q You read your report dated March 19, 1974; is that correct?

THE COURT: He didn't write any report.

Q Read the report. Is that right, sir?

THE COURT: You had better give it back to him to look at it so he knows what you are talking about.

Q Did you read all of the reports we just gave you throughout this examination? You looked through them, did you not, sir?

A I glanced through them, yes.

Q Do you remember saying anywhere to any of those agents that you had a narcotics transaction with Mr. Indiviglia in the seafood restaurant or anywhere else?

THE COURT: Are you asking whether he ever said it, now, or --

Q To any of the agents who you were talking to.

THE COURT: Ever?

(Continued on next page)

Q Throughout these reports.

THE COURT: Forget the reports. Mr.Brackley, forget them, Mr. Rossi forget them, the jury forget them.

If you want to ask --

MR. BRACKLEY: I don't want to forget them that easily, Judge.

THE COURT: I am going to require that you either put them in evidence or --

MR. BRACKLEY: I see what you are referring to.

THE COURT: -- discontinue your reference to them.

MR. BRACKLEY: Fine.

Q After reading through all the things you read through, right, do you know whether or not you ever told the agents anything about the narcotics transactions thatyou testified to in this court yesterday, as respects Mr. Indiviglia?

A I could have.

Q You could have. But you don't know, is that right?

A I don't know if I did.

Q All right.

MR. AMOROSA: He is asking a question, your Honor.

THE COURT: The question is: Do you now know whether you ever told the agents about narcotics transactions with Mr. Indiviglia?

MR. BRACKLEY: That he testified to in this courtroom.

THE COURT: Right.

MR. AMOROSA: I am going to ask that either your Honor put the question or Mr. Brackley, because I think the witness is being confused by so many questions with respect to the same subject.

THE COURT: The best way for me to find that out is to ask the witness.

Do you understand the question? If not I will rephrase it.

THE WITNESS: No.

THE COURT: The question is a very simple one.

Do you recall whether you ever told the agents about any of the narcotics transactions with Mr. Indiviglia, about which you have testified in this court?

THE WITNESS: From the time I was cooperating up until what time?

THE COURT: At any time.

THE WITNESS: I could have, your Honor, yes.

Q But you don't know, is that correct?

A I could have.

Q But you don't know, is that correct?

THE COURT: Answer the question. Do you know or are you saying you could have? Anybody could have.

THE WITNESS: I don't remember.

Q May I have that back.

Now, as of August 20, 1974, had you pleaded guilty any place?

A To the best of my recollection, no.

Q You didn't. All right. So you had never even been before any Judge and you were still hoping that you could make some kind of a deal for yourself, is that right?

A I was before a Judge.

Q To plead guilty?

MR. AMOROSA: Objection. That wasn't the question.

THE COURT: You said he had never been before a Judge. You can ask him now if he pleaded guilty to anything by that time.

THE WITNESS: I don't think I pleaded guilty.

Q So at that time you were just giving all of the information that you thought that you had to give to the agents, is that right?

THE COURT: When, in August of '74?

rkb-8 Rossi-cross

THE COURT: Let's let him have them.

(In open court.)

MR. BRACKLEY: May I have marked 3501-13, page 6, lines 6 to 22, into evidence.

THE COURT: It is received over the objections indicated at the side bar.

xxx (Defendant Indiviglia Exhibit H was received in evidence.)

MR. AMOROSA: Your Honor, that is 3501-10, rather than 13.

THE COURT: I guess it is stipulated even though there are objections to its admissibility, what was offered as a transcript of the proceedings at the time the witness pleaded guilty before Judge Carter.

MR. AMOROSA: A portion of them, yes.

Q Do you recall, sir, when you were telling Judge Carter why he should let you plead guilty you said to him, "I am a married man and I got two children and in all my time I fooled around in the street, I never really touched any narcotics until the time of January 1973, when I met Mr. Coralluzzo. I met him actually in October, but I really started associating steadily with him in January.

"In January we went to Nassau, the Bahamas, and took our wives. That was the first time in my life I

smoked marijuana and snorted cocaine.

"Now, I wash't into heroin any more" --

MR. AMOROSA: I ask Mr. Brackley be instructed to read this in a monotone voice.

THE COURT: Mr.Brackley is incapable of reading anything in a monotone voice.

Q "Ernie was telling me the going thing was cocaine and there was lots of money to be made in cocaine, because it is a rich man's habit, and the law doesn't look upon cocaine as they do heroin because heroin hurts a lot of people and it is really not a bad drug.

"Well, I didn't know the things about cocaine, your Honor, due to the fact I was in business with heroin. I know everything about heroin."

Did you say that to that Judge?

A I did.

Q That you didn't know two things about cocaine?

A I did.

Q When you say you didn't know two things about cocaine, did you mean to imply to the Judge at that time that you didn't know how to test it?

A That is correct.

Q And you didn't know how to deal with it?

A Not deal, test.

Q Now, sir, when it comes time, four months later, in the grand jury to offer testimony about Mr. Indiviglia, did you then state on page JJP22, whatever that is, of your grand jury testimony --

THE COURT: Don't read it. Just ask him the substance of what you want.

Q Did you ever state in the grand jury that you received samples of heroin and samples of cocaine from Mr. Indiviglia and you tested them?

A I think I did.

Q When you say you think you did, do you recall being asked this question and giving this answer:

"Q --

MR. AMOROSA: May I have the page?

MR. BRACKLEY: JJP22, whatever it is. It is the same page, the next to the last page.

MR. AMOROSA: I have it.

Q "Q And did he give you several samples of cocaine and heroin for you to test?

"A Yes, he did.

"Q Did you test those?

"A Yes, I did.

"Q And did you have discussion as to the purchase price of whatever heroin and cocaine he had?

"A Yes, I did."

Is that right? Did you give those answers under oath to the grand jury?

A I did.

Q Were they true?

A They were.

Q So whenyou were telling Judge Carter that you didn't know two things about cocaine, now when it comes to testify and cooperate as you call it, you become a tester of cocaine and you are getting all kinds of samples of cocaine and doing everythingin the world with cocaine?

MR. AMOROSA: Objection.

THE COURT: Sustained. Save that for summation.

Q Did you say in your testimony before this jury that the cocaine that you say was given to you --

THE COURT: Before this jury here in this trial?

MR. BRACKLEY: Yes.

Q -- in August some time of 1972, was given to you by Charles Indiviglia?

A That is correct.

Q Is that true?

A That is true.

Q Did you testify in the grand jury you didn't know who gave you the cocaine because Mr. Ricco and Mr. Indiviglia had it and you assumed it was his?

A I don't recall.

Q Do you recall on JJP1 (2) --

MR. AMOROSA: I object to the procedure.

THE COURT: Overruled.

Q "Q Do you recall whether or not they told you whose kilogram of cocaine it was, or were they apparently partners, to your knowledge?

"A To the best of my knowledge, they didn't say exactly whose it is, so I assume they are partners, yes."

Is that correct?

A That is the answer I gave.

Q Is it your answer today that you don't know whose cocaine it was, if cocaine was ever given to you at all?

A Could you repeat the question?

THE COURT: The last question.

(Question read.)

A Do I know whose cocaine it was now?

Q Yes, sir.

A Yes, I do.

Q Did you speak to Mr. Indiviglia since your grand jury testimony?

A No, I did not.

Q Who told you since April 1975 whose cocaine it was?

A Who told me?

3A (continued on next page.)

1/8/76
AM 3b

Q In other words, where you testified under oath, "To the best of my knowledge they didn't say exactly whose it is, so I assume they were partners," now you know whose it is; is that correct?

A When I am thinking about all the circumstances of this case, to the best of my knowledge, yes.

Q Now that you are testifying before a jury and now that Mr. Indiviglia is here, you know you have to be certain as to what he did and what he didn't do?

A Now that I gave it more thought, yes.

Q Now that you know you are testifying in a case and you know that you have to cooperate and you know that you have to give testimony about specific people, now you don't assume anything any more; now you know?

MR. AMOROSA: He is being asked that question.

A No.

Q I believe you were asked something about the homicide of a man named Jack Spada.

A That is correct.

Q You didn't do it, and if it was done, somebody else did it?

A I didn't do it.

Q But you knew that somebody had accused you of that?

MR. AMOROSA: This case was dismissed because Mr. Burton didn't want to be a witness. There may be other reasons. Rossi testified that Burton was a narcotics customer of his. I can't say that I have any personal knowledge as to why the case was dismissed. It's a local matter.

MR. BRACKLEY: I will be finished with him in about four or five questions.

MR. AMOROSA: I want to make a statement on the record so there is no problem if Rossi is asked about this, that Mr. Rossi will state that he assisted Rizzieri when Rizzieri shot Burton in the back.

MR.JACOBS: There is no reason for him to volunteer that information, or if he denies he did it, that is the end of it.

THE COURT: That is another reason for not going into it.

(Recess)

(In open court, jury present)

THE COURT: All right, Mr. Brackley.

Q Mr. Rossi, I believe before the recess you had stated that you now know that the so-called kilo of cocaine belonged to Charles Indiviglia because you had been putting things together in your mind and figuring the case out; is

that your answer?

A Yes.

Q Didn't you testify at Page 173 of the minutes, your sworn testimony, when the Judge said to you, "Tell us what you found out," and you said, "The kilo of cocaine belonged to Charles Indiviglia."

"Q Who told you that?

"A Charles Indiviglia."

Did he tell you or did you just figure it out by putting all the facts and circumstances together?

A To the best of my recollection, he told me.

Q So it is not that you are putting together all the facts and circumstances that you said a few minutes ago?

MR. AMOROSA: Objection.

THE COURT: Overruled.

A I am thinking about that particular circumstance, yes.

Q In other words, you are changing your testimony back to what you said yesterday; is that correct?

A I am changing my testimony?

Q Now you are not saying it's facts and circumstances, this and that, but that he actually told me it was his?

MR. AMOROSA: Objection.

THE COURT: Sustained.

Please stop it.

Q In your grand jury, you didn't say whose cocaine it was?

A That is correct.

Q So you go from "he didn't told me whose it is" to --

THE COURT: That is enough, Mr. Brackley.

MR. BRACKLEY: No further questions.

CROSS-EXAMINATION

BY MR. JACOBS:

Q Mr. Rossi, prior to your arrest in January of 1974, what was the longest period of time you had ever spent in jail?

A About a month.

Q And you were arrested on January 24, 1974 and placed in the Tombs; is that right?

A That is right.

Q How long were you in the Tombs before you decided that it was time to cooperate with the Government?

A About two months.

Q And you contacted someone in the Government?

A I don't remember if I contacted them or they contacted me, but we got in touch, yes.

Q Referring to your testimony at the courthouse on

A Yes, I do.

Q So Mr. Lavin told you two weeks before the trial, two weeks before this examination, and you didn't recall it, is that right?

A That's correct.

Q Do you know a man named Iacone?

A I do.

Q Did you --

A I-a-c-o-n-o, Iacono.

Q I am sorry about the pronunciation. Did you once tell the agents that you had a transaction with Mr. Iacono and then later tell them it never happened?

A I don't recall.

MR. AMOROSA: A narcotics transaction?

MR. JACOBS: Narcotics transaction. 524.

Q This is referring to Mr. Iacono.

"Q Does that refresh your recollection that this transaction took place?

"A I remember telling agents that,but that transaction didn't take place."

Do you recall that?

MR. AMOROSA: The record does not indicate what type of transaction he is being questions about at that time.

THE COURT: It doesn't have to. But it has to be at least connected with the subject we are talking about, Mr. Jacobs.

MR. AMOROSA: I am not sure of that, your Honor.

THE COURT: Not sure of what?

MR. AMOROSA: That at the time Mr. Rossi was being questioned about this transaction was defined in the record. I think Mr. Weinstein --

THE COURT: Mr. Amorosa, don't make a speech. I told Mr. Jacobs he will have to connect it.

MR. AMOROSA: Perhaps there is clarifying testimony but I don't see it.

Q The transaction that you were discussing -- that you were testifying about, about Mr. Iacono, was it a narcotics transaction?

A What are you talking that I testified? In what trial?

Q In the Coralluzzo trial.

A Yes, that's right.

Q Did you testify with regard to a narcotic transaction with Mr. Iacono?

A I could have, yes.

Q Do you recall testifying about a transaction with Mr. Iacono in June of 1973?

THE COURT: You mean at the Coralluzzo trial?

MR. JACOBS: Yes.

A I could have, yes.

Q Do you recall making this answer to this question, page 522.

MR. AMOROSA: I object to the procedure.

THE COURT: I won't allow you to simply ask him about it unless it refers to Iacono.

MR. JACOBS: It does.

THE COURT: All right.

Q "Q Aside from any statements, was there a transaction, sir, in June of 1973 with Mr. Iacono?

"A No, there was not."

Do you recall that question and that answer?

A I recall.

Q Isn't it a fact that you told the agents about a narcotic transactionwith Mr. Iacono and later told the agents it never happened?

A I don't remember.

MR. AMOROSA: Your Honor, I ask that 523 and 524 be read into the record at this time. I have a copy and I will let your Honor see it.

THE COURT: I would like to see it before

I rule. All of those pages.

MR. AMOROSA: I think Mr. Jacobs quoted from the transcript at 522. If you look at 523 and 524, you will see there is some relevancy there.

MR. JACOBS: I have no objection to reading the whole matter, but it is very confusing.

THE COURT: Why don't you just -- I will state for the record that at the Coralluzzo trial, immediately after being asked and answering the question which Mr. Jacobs last read, Mr.Rossi was shown a document and asked if it refreshed his recollection and then --

MR. JACOBS: Your Honor, it might clear it up --

THE COURT: Just a minute, please. And then was asked on page 524, at line 12, "Does that refresh your recollection that this transaction took place?

"A I remember telling the agents that, that that transaction didn't take place."

I believe that is a complete presentation of the proper situation.

MR. AMOROSA: Your Honor, I think perhaps on the next page there is a reference with respect to time of the transaction.

THE COURT: Mr. Amorosa, you are going to have

to do this on redirect examination.

MR. JACOBS: I believe there is one more question and answer, your Honor.

THE COURT: Go ahead.

MR. JACOBS: Page 525, at the top.

Q "Q Mr. Rossi, does that refresh your recollection, sir, that you later told an agent that this transaction never took place?

"A Yes, it does."

THE COURT: What are you asking him?

Q Do you recall that question and that answer?

A I recall it.

Q Yes, sir.

A Excuse me?

Q Would you like me to repeat it?

THE COURT: He says he does recall it.

MR. JACOBS: Thank you.

Q Mr. Rossi, did you admit to all the robberies and things because you were just tired, fed up?

A Not because I was tired and fed up.

Q Excuse me?

A Not because I was tired and fed up.

Q You wanted to come clean, didn't you?

A That's correct.

report of Agent Bell.

A Right.

MR. AMOROSA: The report of Agent Bell is not in evidence.

THE COURT: You have just heard the questions and answers that you say you recall having made at the Coralluzzo trial.

THE WITNESS: Yes.

THE COURT: Were they true at the time, the answers you gave?

THE WITNESS: At the time, yes.

THE COURT: Is your testimony today any different?

THE WITNESS: Yes.

THE COURT: How does it differ today than how it was at the Coralluzzo trial?

THE WITNESS: When I spoke down I talked to the agents.

THE COURT: What do you say now is different than what you said then?

THE WITNESS: The dates are wrong and the amounts are wrong of weight.

THE COURT: Do you want to pursue this, Mr. Jacobs?

MR. JACOBS: Yes.

Q You told me a few minutes ago that prior to -- first of all, you told me in 1969 and 1970 you were not dealing with the Riccos, is that right?

A That is correct.

Q So that is wrong?

MR. AMOROSA: Objection.

THE COURT: Sustained.

Q That is different than the statement you made -- than your testimony at the Coralluzzo trial?

MR. AMOROSA: Objection.

THE COURT: Overruled.

A That is correct.

Q You testified from August of 1972 until the end of 1972, weekly you were receiving eighths from the Riccos. Is that different from your testimony at the Coralluzzo trial?

MR. AMOROSA: Objection unless he is shown a copy of the testimony.

THE COURT: You can look at anything you want to.

THE WITNESS: I am getting confused with the testimony.

MR. JACOBS: I will be glad to let him see a copy of the testimony.

MR. AMOROSA: These questions were not going to that --

THE COURT: Mr. Amorosa, stop making speeches.

MR. AMOROSA: Yes, sir.

THE COURT: What is the problem?

THE WITNESS: I am on page 808 and I don't know what he is referring to.

THE COURT: The general question is very easy. Mr. Jacobs is trying to bring to the jury's attention the difference between what you are saying now and what you said at the Coralluzzo trial.

Do you understand that?

THE WITNESS: Yes.

THE COURT: And you admit you have said some things different?

THE WITNESS: Yes.

THE COURT: So he is going through them one by one and saying did you say this here and say this at the Coralluzzo trial, do you understand?

THE WITNESS: Yes.

Q You testified here that from August of 1972 you were receiving eighths from the Riccos, eighths of heroin.

At the Coralluzzo trial you testified you were receiving three to five kilos, is that correct?

MR. AMOROSA: Objection. That was not his testimony at the Coralluzzo trial.

THE COURT: He said "is that correct?'

A I don't know if that is correct unless I see the testimony.

MR. JACOBS: Can I show him the testimony?

End 5A

(continued on next page.)

Q Would you read these three pages to yourself, 805 through 807?

(Pause)

THE COURT: I think you mean through the top of Page 807, it looks like to Line 7.

MR. JACOBS: Yes, your Honor.

THE COURT: Do you understand the subject matter he is talking about, Mr. Rossi?

THE WITNESS: Yes, sir.

THE COURT: Start that question again.

Q Mr. Rossi, you testified at this trial, starting at 1972 from the beginning of the year until about August, you were receiving ounces from the Riccos every week.

At the Coralluzzo trial you testified --

THE COURT: Or seemed to have testified.

Q You seemed to have testified that you were receiving 3 to 5 kilos every seven to ten days.

A That is correct.

Q Which is correct, you were receiving 3 to 5 kilos or eighths, or ounces?

A I was receiving ounces in the beginning. Then from about August of '72, the summer of '72 to December of '72 I was receiving weight.

Q Did you testify here five minutes ago that you

were receiving eighths every week?

MR. AMOROSA: Objection.

THE COURT: Overruled. He can be asked if he testified to that.

A I testified we were getting at least an eighth a week.

THE COURT: At least an eighth?

THE WITNESS: An eighth.

THE COURT: At least an eighth can be up to a million pounds.

THE WITNESS: An eighth.

THE COURT: During what period of time were you receiving the eighths?

THE WITNESS: From August 1972 to December 1972.

THE COURT: When you were receiving the weight, as you call it, which I assume is an eighth or more, certainly not ounces?

THE WITNESS: No. The latter part of August to the beginning of October.

THE COURT: So an eighth was the smallest quantity you received when you were taking deliveries in weight, is that right?

THE WITNESS: Yes.

THE COURT: Before that it was,roughly speaking,

ounces?

THE WITNESS: Yes.

Q What was the largest amount you ever received from the Riccos --

MR. JACOBS: Withdrawn

Q Aside from the 2 kilos transaction you testified to here, I believe in December of 1972, was there ever any other time you received more than one kilo from the Riccos from August until December 1972?

A I don't understand the question.

Q Aside from the 2 kilo transaction you told us about, leaving that aside, did you ever receive more than one kilo from the Riccos between August 1972 and December of 1972?

A More than one?

Q Yes.

A No, I don't think so.

Q Did you testify at the Coralluzzo trial that you were regularly receiving between 3 and 5 kilos every seven to ten days?

A I could have, yes.

Q You have just read the testimony. What do you mean you "could have"?

A According to the testimony I did.

THE COURT: Can you reconcile that testimony with your present testimony?

THE WITNESS: Yes.

THE COURT: How?

THE WITNESS: Over a period from the beginning of August to the end of September, and adding up all the eighths and the quarters and the halves and the 2s, it added up to weight.

Q "Q You recall telling him" --

THE COURT: You are reading from the Coralluzzo transcript?

MR. JACOBS: 806, Line 4.

Q "Q Do you recall telling him you would have obtained anywhere from 3 to 5 kilos of heroin on consignment every seven to ten days and you would sell the cocaine and make weekly or daily payments to Angelo Ricco?

"Do you recall that conversation?

"A Yes, I do."

Did you tell Agent Bell you got a total of 3 to 5 or that you got 3 to 5 every seven to ten days?

A I don't recall telling him that I got 3 to 5 every seven or ten days.

Q But you admitted to telling him that at the Coralluzzo trial?

A I remember telling him something of the substance of that, yes. What he wrote down, I don't know.

Q Isn't it possible in March 1974 you were trying to impress Agent Bell with the amounts?

A No, sir.

Q You have given us an explanation about the 3 to 5. Did you testify here the last time you ever took heroin from the Riccos was in December 1972?

A That is correct.

Q Did you testify at the Coralluzzo trial that in March 1973 you got 4 kilos from the Riccos?

A I guess I did.

Q Give me your explanation for that.

A My explanation what I said at the Coralluzzo trial and what I am saying now?

Q That is right.

A I am refreshing my recollection.

Q From what?

A From thinking about this particular.

Q Have you read your testimony at the Coralluzzo trial before you testified here?

A I went over it. I didn't read it.

Q Did you read these pages that we have been going over in the last few minutes?

Court we will be able to interview them outside the presence of everyone else, including the U. S. Attorney?

THE COURT: You will be able to interview them in this courthouse out of the presence of the United States Attorney but not necessarily out of the presence of everybody. You may have a marshal in the room.

MR. MERBERG: But not within earshot.

THE COURT: He may be in earshot. I will order him instructed not to divulge anything.

MR. AMOROSA: It is our position that Mr. and Mrs. Rossi, Senior, can have whomever they want present with them.

THE COURT: And they can refuse to be interviewed, too.

MR.RICHMAN: Sometime before the end of the day I would like to have the opportunity to make a motion directed at the grand jury testimony of Mr. Rossi. I am referring to the Rao case. In that case I believe the complete division knocked down the indictment based upon the grand jury testimony where it appeared that the district attorney did all the testifying and the witness said, "Yes, I did. Yes, I did."

This is exactly what happened in this case.

THE COURT: There is a similar doctrine in the

Second Circuit.

MR. RICHMAN: Under those facts, this entire testimony is replete with "Yes, I did" and nothing probative and substantive.

THE COURT: I would be glad to look it over.

(Luncheon recess)

bsb-11 Rossi-cross

Q Tell the jury how you happened to suffer this brain damage.

A I got hit over the head.

Q By a falling brick or what?

A By inmates.

Q And isn't that because of your aggressive personality, you had some fights in the Tombs?

A No, sir, that had nothing to do with the situation.

Q Yes or no, Mr. Rossi, did somebody just walk up to you and hit you over the head?

A When my back was turned, yes.

Q And you had some blood vessels which were damaged, and you were taking some medication to try to fix your brain up?

A Yes.

Q Now, back when you were in the service, Mr. Rossi, you had a great deal of psychological problems?

A I had psychological problems.

Q Did you have some mental problems in the service?

THE COURT: He said "I had some psychological problems," didn't you?

THE WITNESS: Yes, sir.

MR. MERBERG: I didn't hear him, your Honor.

this point, and I would suggest to your Honor, from my reading of the material, we may be getting into a second or third conspiracy.

THE COURT: Let's see whether your concerns are appropriate.

MR. AMOROSA: The heroin which Rizzieri distributed to Ferrarone came from the Riccos and we think the proof has shown that. Rossi testified here although he stopped taking heroin from the Riccos --

THE COURT: What does that have to do with this question of Ferrarone and Long Island -- what is the name?

MR. AMOROSA: Ferrone.

The distribution is that Ferrone will talk about that came from Rizzieri occurred in November 1972, right in the period Rossi was saying he distributed it and Rizzieri was his partner. That distribution by the defendant Rizzieri to Ferrone began in 1972, the second distribution that he will testify to occurred in February of 1973, and Rossi has testified that although --

THE COURT: I don't think you are meeting Mr. Goldberger's point.

MR. AMOROSA: Ferrone was not told where the heroin was coming from. We are proving where the heroin was coming from by Rossi who testified that although he

stopped taking heroin --

THE COURT: Certainly you have the right to prove all that. As I understood Mr. Goldberger, he said he was concerned from the 3500 material that you were going beyond that is that right?

MR. JACOBS: Can I be heard since it directly concerns my client.

THE COURT: Any of you can be heard. I just don't understand the claim.

MR. GOLDBERGER: The problem is, Judge, it appears that Rizzieri is telling Ferrone in the negotiations, I can get anything I want from Long Island, that is my source.

THE COURT: And you claim that is a different source than the one that has been alleged in this indictment?

MR. GOLDBERGER: There doesn't appear to be any evidence in the case so far.

THE COURT: Let me ask Mr. Amorosa.

First of all, do you expect to ask Ferrone about Rizzieri saying that he can get stuff from Long Island and secondly, if you do, is it your claim that it is part of this conspiracy or something else?

MR. AMOROSA: I can't recall what Mr. Goldberger is referring to in the 3500 material. Rizzieri will testify --

excuse me, Ferrone will testify that he received these distributions. The proof, it is our position, shows that the distributions came from the Riccos through Rizzieri to Ferrone.

As to the conversation that Ferrone had with Rizzieri --

THE COURT: Let's assume there is such a one. Do you expect your questions will bring it out?

MR. GOLDBERGER: Perhaps I can show you something.

MR. JACOBS: I just showed it to Mr. Amorosa.

MR. GOLDBERGER: I believe it was mentioned on more than that one occasion.

THE COURT: One at a time.

Do you expect to exploit that statement?

MR. AMOROSA: If counsel is referring to what I have in my hand now.

THE COURT: Which is 3504-21 and it states in the third paragraph of the text, "After Ferrone left, Jimmie told me he had to go to Long Island to get the heroin."

MR. AMOROSA: That is not Ferrone's statement.

THE COURT: I don't care what it is. I am asking you if youexpect to ask Mr. Ferrone about a conversation in which Jimmie told him to go to Long Island.

MR. AMOROSA: Jimmie did not tell Ferrone that Jimmie had to go to Long Island. This is a statement from someone else. This is not a statement made by Jimmie to Ferrone. It was made to an informant.

THE COURT: Do you expect to bring out the Long Island reference here with any witness?

MR. AMOROSA: No, I don't.

MR. JACOBS: Your Honor, first let me show you 3504-3, paragraph 4, which is a statement that my client allegedly made to Ferrone which he states his normal source had dried out and the goods he sold to Ferrone were from a new source.

THE COURT: What is it you want me to comment about?

MR. JACOBS: Simply, I think the Government can prove probably that the November transaction involving my client which was not a direct sale, which was a sale by somebody else with my client sitting in the car, is part of this conspiracy, but as to the February and March transactions, your Honor, I think the proof in the case shows that my client got narcotics from somebody else and sold it to an agent. He was ultimately arrested after the second sale, prosecuted, pleaded guilty and received a ten-year sentence.

It has nothing I submit to do with this case. The core of this case is narcotics supplied by the Riccos to Rossi and Rizzieri that was sold.

THE COURT: And you claim that the February were independent of this conspiracy?

MR. JACOBS: Yes.

MR. AMOROSA: Our claim is contrary to that, Judge. We already have proof in the record through the witness Rossi that after Rossi stopped taking heroin from the Riccos, Rizzieri continued to take heroin from the Riccos.

We will prove through another witness that will follow Ferrone that Rizzieri continued to take heroin from the Riccos.

THE COURT: For how long?

MR. AMOROSA: Until the time of his arrest by Ferrone.

THE COURT: After the transactions to which Mr. Jacobs referred?

MR. AMOROSA: Yes.

MR. JACOBS: This is so important --

THE COURT: It is very important, but it seems to me you are asking me to decide in advance of the testimony.

MR. JACOBS: If your Honor later finds there is no question --

THE COURT: I don't see how I can try the case -- I am not the jury.

MR. JACOBS: The fact he says somebody is going to say, I think we should have an offer of proof what the Government is going to prove on this.

MR. AMOROSA: Judge, in any event, assuming, and we certainly don't concede the heroin came from somebody in Long Island, but assuming it did, the proof would come in against Rizzier anyway, it would not come in against the other defendants. This is right during the conspiratorial period.

It would come in as a similar act.

We have proven and we will supply additional proof that the heroin that Rizzieri sold to Ferrone in February came from the Riccos.

THE COURT: On that offer of proof, I don't see how I can deny it at this stage.

MR.JACOBS: I would like to know who is going to testify to that fact.

MR. AMOROSA: I will be prepared to tell counsel. The witness Mengrone who will also testify in this case.

End 1B

MR. JACOBS: That he has personal knowledge?

MR. AMOROSA: Will further corroborate the fact that the Riccos were selling heroin to Rizzieri in February and March of 1973 up until, conclusively, the time of Rizzieri's arrest by Special Agent Ferrone in March of '73.

Also, I would like to state again that Rossi has already testified that after he stopped taking heroin from the Riccos, Rizzieri told him that Rizzieri continued to take heroin from the Riccos.

MR. JACOBS: There is direct showing here, my client who is dealing with somebody, says, "My normal source dried up and I got it from somewhere else," and later on he says, "I have to go out to Long Island to get it."

THE COURT: If this was an admission, I would think it would be very important,but in the context of this discussion it is a self-serving declaration, and I can't acquit Mr. Rizzieri in advance.

MR. JACOBS: He is dealing with somebody who is undercover, he doesn't know he is an agent.

THE COURT: It's self-serving in the sense that you are now arguing that something he once said to the agent is enough on its face, almost, to say that I should acquit somebody before I hear the evidence.

MR. JACOBS: Not acquit somebody, but I submit the Government should prove the connection first.

If this testimony, sales to agent, comes in and the Government then does not satisfy your Honor, how can the jury wipe three sales out of their minds? Your Honor, I would think, would have to grant a mistrial.

THE COURT: I will have to determine that when the time comes.

MR. GOLDBERGER: My understanding, from reading the material, and I can't find the sheet here, is that the 3500 material indicates that Rizzieri has other sources for material, Jimmy Castelatto, at or about this time, which is a totally different source from the Riccos, as I understand it, so if the goods from the two sales --

THE COURT: What you are trying to do is to get me to --

MR. GOLDBERGER: Exclude the February-March transaction.

THE COURT: -- to rule on the assumption you could prove certain things which you may or may not be able to do.

MR. JACOBS: May I make a suggestion, that a hearing be held to determine whether there is sufficient connection to let the proof in.

THE COURT: I decline to do it.

MR. AMOROSA: Based on the material in the record that Rizzieri told Rossi --

THE COURT: You mean I should hear the witnesses' testimony in advance?

MR. JACOBS: Just on this one point.

THE COURT: Ferrone is here. Is the other witness here, Mengrone?

MR. AMOROSA: No. He is in New York, but he is not prepared to testify at this point. I don't anticipate he will be on the witness stand today.

Our position is already an adequate foundation has been laid for this through the testimony of the witness Rossi.

MR. JACOBS: All Rossi said is that in January he stopped getting drugs and that Rizzier got it afterwards. That doesn't tie anything in with February or March.

THE COURT: I don't think the Government has an affirmative obligation to establish that these sales in February and March came from Ricco, as long as they do not have affirmative information that they did not come --

MR. JACOBS: They do, from Rizzieri and from a Government informant.

MR. AMOROSA: Rizzieri told that to Ferrone.

4 rkmch

assuming Ferrone testifies to that. That doesn't mean it's true. He could have been looking to mislead Ferrone.

MR. JACOBS: What about the Government's informant?

MR. AMOROSA: They could call the informant to the stand.

THE COURT: Gentlemen, I won't go any further.

MR. RICHMAN: There is another issue. I am ill. I have a virus. I came in specifically just because I am cross-examining Rossi --

THE COURT: Off the record.

(Discussion off the record)

THE COURT: Would you bring in Mr. Blase to confirm what you have just told me on the record.

(Defendant Blase present)

THE COURT: Mr. Blase, Mr. Richman tells me he is not well. He has come in today for the purpose of cross-examining Mr. Rossi and possibly redirect of Mr. Rossi by Mr. Amorosa, so Mr. Richman can then leave and you will then be represented by Mr. Goldberger.

Is that satisfactory to you?

DEFENDANT BLASE: Yes.

MR. MITCHELL: Your Honor, I went over to state court. Something happened to the judge. They told me to

5 rkmch

come back at 11:30. Mr. Richman was going to cover me. Can Mr. Jacobs cover me?

THE COURT: Yes.

MR. RICHMAN: Lastly, if you recall at the end of the day on Thursday, I made a motion with relation to the defendant Blase concerning the grand jury testimony. I left the grand jury minutes with your Honor, and did your Honor happen to peruse the minutes?

THE COURT: I didn't have an opportunity to, but I am conscious of it and I will do it as quickly as I can.

MR. MERBERG: Will you instruct on the A-1 felony law?

THE COURT: You will have to give me information about the law because I am not acquainted with it.

MR. AMOROSA: We are making arrangements to have Rossi's parents brought in this weekend. I believe they will be here at approximately 9:00 p.m. this evening.

THE COURT: I thought we already decided they would simply be brought in at the end of the Government's case.

MR. AMOROSA: The difficulty with that, they want Mr. Rossi present and Mr. Rossi will be leaving the state after his testimony, so we would simply ask your Honor to permit us to have all counsel speak to them at this time

rather than another time when we have to bring Rossi back into the state.

MR. GOLDBERGER: I don't want to create any problems, but there is the possibility --

THE COURT: Why does this have to be 9:00 p.m. instead of 6:00 p.m.?

MR. AMOROSA: The agents who are here now will be going to pick them up, and they will be staying with Rossi during the day. Perhaps we could have them back by 8:00 or by 7:00. I say 9:00 because I am certain they will be here by that time.

THE COURT: I don't know how far they are away from here, but if we conclude at 4:30 or 5:00 I can't see why it will take so long to bring them here.

MR. AMOROSA: I will arrange to have them here sooner.

MR. GOLDBERGER: Mr. Amorosa made the statement Mr. Rossi will be leaving the state. There is a possibility that Mr. Rossi will be recalled.

THE COURT: I don't know how far he is going and I am not going to inquire, but I am directing Mr. Amorosa to keep him in contact with you so he can be back here within such time as not to unduly delay the trial if he is needed.

MR. RICHMAN: On the Ferrone testimony, that occurs, events occur after Mr. Blase terminated his contact with this alleged act. Can you inform the jury of that there is a special instruction?

THE COURT: I will give Blase his fair treatment when the time comes. I think he does deserve to be distinguished from the others.

(Continued on next page)

Q When Mr. Blase stayed in Puerto Rico, you came back, did you not?

A That is correct.

Q Came back to New York?

A That is correct.

Q And you decided to go into the business of narcotics on a regular basis?

A That is correct.

Q And you started a whole new thing, you cut your partners loose, you had no more Criscenti partners, no more Blase partners?

A That is correct.

Q A completely different thing?

A That is not correct.

Q You were no longer dealing in small ounces, you no longer had Criscentis or Blase as your partners, you had a whole new operation in ways of your thinking?

A That is correct. In thinking?

Q It was no longer a general partnership you had goine. You had a limited corporation, shall we say?

MR. AMORSA: Objection.

THE COURT: Overruled.

A As far as the people that were concerned that weren't involved any more.

THE COURT: What do you mean by that?

THE WITNESS: When we come back from Puerto Rico, we decided to get rid of all the leeches.

THE COURT: Who is "we"?

THE WITNESS: Me and Rizzieri.

Q Mr. Blase had nothing to do with Rizzieri, he just met him in Puerto Rico?

A That is correct.

Q So he had nothing to do with Mr. Rizzier?

A I don't know if he ever met him. I can't answer that. I don't remember.

Q So you formed a whole new business?

A As far as customers,you mean? What do you mean when you say, formed a whole new business?

Q You had a new partnership.

MR. AMOROSA: Objection.

THE COURT: Overruled.

A A new partner, but not a new business. It was still narcotics.

Q It is like going into the car business. You can have a small dealership down the corner or one like General Motors.

A It is still narcotics. Small or large, it is still the same business.

Q You had different partners?

A Yes.

Q Different type of operation, different quantities?

A When you say different type of operation --

Q You were no longer nickel and diming it, you were eealing in big dollars.

A That is correct.

Q Mr. Rossi, when for the first time did you tell the agents or the U.S.Attorney's office about Fred Blase?

A Some time during the course when I started cooperating.

Q When you started cooperating?

A When I started cooperating.

Q Are you sure it wasn't on or around April of 1975 when you were cooperating about a year?

A I don't really know.

Q YOu don't really know?

A No.

Q When you say you told them about Mr.Blase when you started cooperating, did you see them take any notes?

A You mean from the first day I started talking to --

Q Not the very first day, the second day.

A The second meeting I had with law enforcement

Q Who told Mr. Mesland about Freddie Blase?

MR.RICHMAN: Objection.

THE COURT: You can ask if he did.

Q Did you tell Mr. Mesland about Freddie Blase prior to the time he asked you a question about Freddie Blase?

A Yes, sir.

Q When was the last time you received heroin, actual physical possession of heroin from theRiccos?

A December 1972.

Q Did Rizzieri receive heroin after you stopped receiving heroin from the Riccos?

A Yes, sir.

Q How do you know that, Mr. Rossi?

A He told me.

Q You testified whenyou were in county jail, various county jails after you began to cooperate with the Government, you were in a different section of the jails, is that correct?

A That is correct.

Q Is that bec-use you were isolated from general population?

MR. GOLDBERGER: Objection. Redirect doesn't mean he can lead.

THE COURT: Sustained. Ask him why it was.

MR. MITCHELL: Objection.

MR. GOLDBERGER: I have no objection to that queswtion, for the record.

MR.MITCHELL: I will withdraw it.

THE COURT: All right.

Q What was your motivation, when you were talking to the doctors?

THE COURT: Why did he go to the doctors or what?

MR. AMOROSA: The question is when he was talking to the Government, I would like to know his motivation at that time.

THE COURT: Motivation as to what subject?

MR. AMOROSA: As to whether he was going to be judged competent or incompetent in connection with the felonious assault charge.

THE COURT: I don't understand the question. Do you?

THE WITNESS: Yes, your Honor.

THE COURT: Go ahead and answer it.

A I went to Bellevue so I wouldn't have to face the charges that were pending against me and I could be incompetent.

End 3A

A It was going back and forth. They were calling me up in my house in Nyack, New York, and one day --

THE COURT: Who is "they"?

THE WITNESS: Peter Mengrone.

THE COURT: That is only one person.

THE WITNESS: I got phone calls from other people, Peter Browning, Luis Guerra, Ernie Coralluzzo.

A (Continuing) Peter Mengrone told me that they wanted to have a sit-down at a club.

Q What is a "sit-down"?

A A sit-down is when two sides get together. If there is a problem or there is a feud, when you go to the sit-down you are just supposed to talk and when good people sit down, you try to resolve the problem, so Peter Mengrone told me over the phone that there was going to be a sit-down at the Magic Carpet in the Bronx. And I said, "Why is there going to be a sit-down?"

He said, "We had a conversation." I don't remember the exact words. He said, "I am working for Tony and Angelo now and being I am working for Tony and Angelo, they are stepping in the picture."

I said, "Why are they stepping in the picture?"

He said, "They are stepping in the picture to try to resolve to get the money."

I said, "When the deal was going to go down, I didn't know anybody was involved over here. Now that there is a problem, there are other people involved in the p[illegible]e."

And he said, "Yes," and it went back and forth, back and forth, God knows how long, a month,month and a half, and I didn't give the money back.

(Continued on next page)

Q You kept the money?

A Not all myself.

Q Mr. Rossi --

MR. GOLDBERGER: Your Honor, may we have a time on that?

MR. AMOROSA: I was just about to do that.

THE COURT: When did this series of discussions occur?

THE WITNESS: August or September of 1973.

Q Mr. Rossi, let me direct your attention specifically to September 13, 1973 at 7:52 p.m.

Did you call Peter Mengrone's home at that time, if you can recall?

A I could have.

Q All right.

Did you know that in September of that year Peter Mengrone's phone was being monitored by representatives of the law enforcement department of the State of New York?

A I didn't.

Q Let me show you what I will have marked Government Exhibit 11 for identification.

xx (Government's Exhibit No. 11 marked for identification.)

Q I ask you whether it refreshes your recollection

MR. GOLDBERGER: There is no proper foundation laid. In addition to which, if there is a transcription, the tape itself should be here, and that is the real evidence in the case, not a transcription. It's only used as an aid to the jury under any circumstances.

I object.

THE COURT: I agree with the last point made by Mr. Goldberger. If you wish to bring the tape and play it, you are free to do so.

You can ask him if it refreshes his recollection as to what was said.

Q Didyou say --

THE COURT: Ask him what he said.

Q What did you say, Mr. Rossi --

THE COURT: On what subject?

Q -- and what did Mr. Mengrone say as to why Mengrone went to Bragiole for help?

THE COURT: Don't read it.

MR. GOLDBERGER: May we know whether it's from the witness' own independent recollection or from what he read?

THE COURT: He turned it over.

THE WITNESS: In my own words, your Honor?

THE COURT: Yes.

THE WITNESS: What Peter Mengrone said to me?

Q And what you said to him, with respect to why he went to Bragiole.

A He said that Tony Bragiole was involved.

I said, "Why wasn't he involved from the beginning?"

He said, "I had no alternative. I had to bring him in the picture," he said, "To salvage the money."

I said, "Okay. Why did you do that, because I used to do business with them?"

Q Is that what you said on the phone, Mr. Rossi, "Why did you do that, because I used to do business with them?"

A To the best of my recollection.

Q Was that prior to the time you were arrested, Mr. Rossi?

A In January 24th?

Q When you said that to Mengrone on the telephone, was it prior to the time you were arrested in this case?

A Yes, sir.

Q So you didn't have any motive at that time, Mr. Rossi?

MR. JACOBS: I object. He's summing up.

THE COURT: He certainly is.

Sustained.

MR. GOLDBERGER: May I be allowed to look at that document, your Honor, while Mr. Amorosa continues?

Thank you.

MR.AMOROSA: We intend to offer that portion of the tape which corresponds --

THE COURT: Offer it when you intend to.

MR. AMOROSA: Yes, sir.

Q What, Mr. Rossi, did Peter Mengrone say to you when you said that to him, as best as you can recall?

A He says --

MR. JACOBS: I object to all this as being outside the scope of this conspiracy. This is September 1973.

THE COURT: I don't see why that is outside the scope of the conspiracy.

Q When you said that, Mr. Rossi, what you just testified to --

THE COURT: I didn't hear what you said.

Q Tell us again.

A That I used to do business with them.

THE COURT: What did he reply?

THE WITNESS: And he says, "No, that's not the reason why I went to them."

I asked him what the reason was.

Q What did he say?

A He says that he was pulling goods from them.

Q He said that in that conversation?

THE COURT: He said that's what he said in that conversation.

Q Incidentally, Mr. Rossi, have you listened to that conversation recently?

THE COURT: To the tape?

MR. AMOROSA: Yes, sir.

A I did.

Q Did the tape correspond to what was transcribed?

MR. GOLDBERGER: I object. If he offers it he can ask him those questions. He knows that.

THE COURT: Sustained.

You can do it now if you don't want to recall the witness.

MR. AMOROSA: I don't have the tape right here at this time. We will put it in through Mengrone.

MR. JACOBS: I object to the Government's statements on what they intend doing.

THE COURT: I will allow him to question the witness in advance so he doesn't have to be called back at a later time.

You said you heard the tape recently; is that right?

10 bsmch

THE COURT: Yes.

MR. GOLDBERGER: I have two things to say.

First of all,your Honor, I have spoken to Mr. Jacobs, Mr. Rizzieri's attorney. Mr. Jacobs tells me that since your Honor has decided to allow the sale -- testimony regarding the sale transaction with Rizzieri into evidence, that Mr. Jacobs plans to admit the sales, admit the truth of the sales involving Rizzieri.

If that is the case, I'll move for a severance and I want to alert the Court, I am going to move for a severance on the grounds of antagonistic defense. My client is closely connected to Rizzieri during the course of the testimony by Albert Rossi. If Mr. Jacobs decides that he has to admit the sales transactions, the spill-over prejudice on Angelo Ricco in this case is enormous.

If Jimmy Rizzieri made the sales, therefore, necessarily Rizzieri was involved with the Riccos in selling drugs, and therefore they are guilty of the conspiracy. If those transactions come in and Mr. Jacobs admits the truth of the sales, I will move for a severance, and I feel that the Court should grant it because I don't think it's at all possible at that point for Mr. Angelo Ricco to receive a fair trial.

MR. MERBERG: It's the same problem with DiSalvo. I believe Mr. Rossi testified that the one eighth transaction was paid to Mr. Rizzieri.

MR. GOLDBERGER: Your Honor, as authority for this, there was United States v. Barrera. Although the Court didn't reverse in Barrera, the case involved Mr. DeLuca's attorney, who took the position that he had an insanity defense and argued to the jury in his summation that, in effect, everything was true but that DeLuca was insane. The Court in that case, and I don't know the judge that wrote the opinion, although I believe it may have been Judge Hayes, said that this was a very close question of antagonistic defenses, and that it was very close and that he thought that the Court -- the District Courts ought to be aware of this problem in the future.

THE COURT: There is no doubt that there can be antagonistic defenses.

Can you give us the citation of Barrera during the day so we can check it out? What is the spelling?

MR. GOLDBERGER: B-a-r-r-e-r-a.

MR. MITCHELL: A November '72 case.

THE COURT: If it's a '72 case we can find it.

MR. GOLDBERGER: The second objection, your Honor, I object that the Court has given Mr. Amorosa

too much latitude on redirect examination regarding the Mengrone --

THE COURT: I don't think it's my job to control that. You haven't objected on the grounds of the scope, and I am perfectly willing to hear such an objection now. In fact, I am a little confused as to what Mr. Amorosa is trying to establish here, except the only connection that I have been able to discern so far is that on cross-examination Mr. Goldberger brought out that Mr. Rossi had called Bragiole from jail and tried to get his assistance and was turned down.

What is it you are trying to establish?

MR. AMOROSA: These statements that Rossi made prior to the time of his arrest, your Honor, are prior consistent statements antedating the motive for Rossi to lie.

Mr. Goldberger, Mr. Brackley, all counsel, suggested in cross-examination of Rossi, by their questions and by the answers, that Rossi began to fabricate a story framing their clients subsequent to Rossi's arrest.

These statements that Rossi made, and we will introduce the tapes with respect to them, antedate his arrest, of course, where he's saying in substance the same thing he said here on direct examination when he had

no motive to lie. He was talking to Mengrone.

The case law is abundant, the federal rules are clear with respect to this. I have the rules outside if your Honor wants the citation of the --

THE COURT: I don't think you need a rule. The fundamental propsition is that you are entitled to show that a man acted before he had a motivation to lie the same way he acted in the period in which it is claimed that he lied --

MR. AMOROSA: Exactly.

Secondly -- I'm sorry, your Honor.

THE COURT: All right. I would like to also put that in on a limited basis, just for purposes of time.

MR. AMOROSA: Prior consistent statements come in now under the federal rules as substantive proof rather than just to be considered by the jury to bolster the witness' credibility.

At this point it is our position that Rossi's statements to Mengrone antedating his motive to lie come in as substantive proof of the guilt of Bragiole and Angelo Ricco.

MR. GOLDBERGER: The problem is that Bragiole is not on trial here, Judge, and I understand it's a conspiracy case, but I think that Mr. Amorosa is going now

into details which were not explored on cross-examination and which are not properly before the jury at this point.

THE COURT: I do think he's entitled to show that the man said the same thing before he was arrested as you claim he did after he was arrested, solely because it was a fabrication at that time -- that is, that was your claim.

I am not going to get into this business of substantive as distinct from nonsubstantive at this moment.

MR. AMOROSA: The exact statement that Rossi made in connection with the transcript and recording which was just mentioned, not the one he has in his hand at this point, was "Why did you go to Bragiole? Because I used to do business with them?"

THE COURT: I know that.

MR. AMOROSA: Corroborating the fact that it's more than Bragiole involved.

(Continued on next page)

BEST COPY AVAILABLE

THE COURT: You argue that to the jury. Many a person uses the pronoun "them" -- or pronouns loosely with regard to number, although that I agree that it sounds like he was doing business with more than one person.

MR. MITCHELL: Your Honor, Mr. Amorosa said that all prior counsel -- all counsel had cross-examined to try to show that it was a recently fabricated statement on the part of Rossi.

I didn't cross-examine as to the facts at all, only the trip to Florida, and if this is going to be admitted, your Honor, I want a limiting instruction that it doesn't apply to my client in any way, not even in furtherance of the conspiracy, I don't think it should be admitted against him.

THE COURT: Give me the proposed instruction and maybe I will do it.

MR. AMOROSA: We oppose that as a matter of law. I am sorry that is true, Mr. Mitchell didn't suggest to Mr. Rossi that he had recently fabricated his testimony, although certainly I think at least four, if not five counsel, did certainly suggest that he fabricated his testimony.

THE COURT: You all know they are either going to believe Rossi or they are not.

BEST COPY AVAILABLE

MR. AMOROSA: With regard to the reason why we are asking Rossi what Mengrone said, that is, Rossi can testify to his own prior consistent statement. The reason we are asking Rossi what Mengrone said is not to bring in proof of multiple conspiracies to prejudice these defendants, but Mengrone is going to be a w[illegible]ness inthis case, he is named in the indictment as a co-conspirator.

At this time the proof will show when Mengrone takes the witness stand, that is in September and October of 1973, he was actively engaged with the Riccos in the distribution of cocaine and heroin.

So Mengrone's statements to Rossi at that time during these conversations were in furtherance of his participation in the conspiracy.

Mengrone says to Rossi --

THE COURT: This all seems very elaborate and unnecessarily elaborate way of proving these things. Why don't you put the tape in and let the jury hear it and you can argue from it without asking the witness, "What did you say at the time?"

MR. AMOROSA: We intend to do that, but it was my understanding of the law, prior consistent statements come out generally anyway on redirect, so that counsel can have an opportunity on recross to cross-examine.

THE COURT: That is not going into Mengrone's testimony.

MR. AMOROSA: As to Mengrone, you are absolutely right as to that. But to get one statement from Rossi and not the response to Mengrone --

THE COURT: Except we have to move along here. If you are going to put the tape in anyway, to get it all in bits and pieces seems to me to be gilding the lily.

MR. JACOBS: The Government is then saying that nine months after this January ending with Rossi when Mengrone is dealing with the Riccos, they are saying it is all part of this conspiracy.

MR. AMOROSA: Absolutely. Mengrone -- this conspiracy, it is our position, flowed from the beginning, from October of '71 through --

THE COURT: They named the date of December '73.

MR. JACOBS: Of course they did, but you know, there are a lot of --

THE COURT: It is not a question that they are therefore allowed to go to that date, I simply mean I don't know why you are surprised to hear it.

MR. JACOBS: The thing is this, your Honor, if the nexus of the conspiracy is -- is the Government saying the nexus of the conspiracy is the Riccos and if I can

show that drugs were sold to somebody else, does that have anything to do with this? What is the nexus, is it Rossi? Rossi is out -- I mean, Rossi had nothing to do with the Mengrone situation.

MR. AMOROSA: I can explain our position.

THE COURT: Please do.

MR. AMOROSA: The Riccos are at the top. From October of '71 through about December of '72, the Riccos are distributing to Rossi and Blase and Rizzieri at that time, and they are distributing to others, one of whom being George Carrado, the defendant in this case.

In December of '72 Rossi stops taking from the Riccos, but Rizzieri continues to take up until about the time of his arrest.

THE COURT: Of his, Rizzieri's arrest?

MR. AMOROSA: Yes, in about March of 1973.

At that time the Riccos begin to distribute to Peter Mengrone, or begin their association, narcotics association with Peter Mengrone. So it is one continuous narcotics transaction, one continuous conspiracy. Some defendants may not --

THE COURT: It sounds like it could be spoke to me.

MR. MERBERG: How can it be the same conspiracy,

your Honor --

THE COURT: Suppose I was the central man and did business with each one of you and you weren't connected with each other? We will have to hear it and decide when we have the facts.

MR. GOLDBERGER: One other point, your Honor --

THE COURT: I must say, Mr.Amorosa, I don't see that that makes it a continuous conspiracy in the sense that it is a non-spoke conspiracy. What is the name, Kotteakos, you could call that continuous too. It isn't a question of whether chronologically one man continues to do something all the way through and there is never a period of dead time, if that is your implication.

The question is whether -- let's say, Mr. Rizzier, for example, doing business with Mr. Ricco, could reasonably have contemplated that the Riccos were going to be doing business with other people and it would all be one mess of pottage. I am not in a position to judge that at the moment, but I certainly don't want to let my -- to let any silence of mine lead you to believe that I think it is as simple as you think it is.

MR. GOLDBERGER: Judge, I raised that first point because we are going to be getting into Ferrone's testimony --

THE COURT: I don't mean to make light of that first point. Let me ask you this, Mr. Jacobs, you say if Ferrone testifies you are going to admit mechanically -- how is this admission going to occur in this trial mechanically? Are you going to get up and --

MR. JACOBS: I am going to ask Mr. Ferrone leading questions about the conversations --

THE COURT: Which will imply that you are not disputing that they occurred?

MR. JACOBS: But that Ferrone was told that these narocitcs came from other places other than the Riccos--

THE COURT: Other than the Riccos?

MR. JACOBS: That's right.

THE COURT: That doesn't seem to be inconsistent with the Riccos then.

MR. JACOBS: I am also --

THE COURT: If he says, yes, I know it came from the Riccos, that is another matter.

MR. JACOBS: I am going to have -- to prove that my client was arrested in March, he pleaded guilty to sales and was sentenced to ten years imprisonment and is serving the ten years right now.

I am going to argue to the jury in my summation that my client did these things in February and March of

the defendant Indiviglia when it was you first told representatives of the Governme nt about Mr. Indiviglia's involvement.

Do you recall those questions?

MR. BRACKLEY: Objection. They were not the questions. They were specific details about what he testified here about.

MR. AMOROSA: I believe Mr.Brackley is correct.

A Specific details, I remember that.

Q When you spoke to the agents shortly after you began to cooperate, Mr. Rossi, did youtell them in general about Mr. Indiviglia's involvement?

MR. BRACKLEY: Objection to the form of the question.

THE COURT: Overruled.

A I did.

Q When was the first time, mr. Rossi, you were asked for the specific details of Mr. Indiviglia's involvement, can you recall?

A No, I can't.

Q Can you recall whether it was in 1974 or 1975?

A I believe it was 1975.

Q There were some questions on cross-examination by Mr. Goldberger with respect to the reasons why you

AFTERNOON SESSION

2:00 p.m.

(In the robing room)

THE COURT: I want to discuss further the question that Mr. Goldberger raised this morning about the possible effect of an admission by Mr. Rizzieri.

I am not clear, Mr. Amorosa, whether the testimony that you propose to elicit from Mr. Ferrone will have to do with sales which the Government claims were part of this conspiracy.

Will you say something for the record?

MR. AMOROSA: That is so. We intend to elicit from Ferrone testimony that Ferrone purchased narcotics from Rizzieri which came from the Riccos.

The first purchase was in November. It relates to Count 4 of the indictment, specifically, November 22nd.

THE COURT: Am I correct in assuming, therefore, that it is the contention of the Government that this is not part of any material with regard to which Mr. Rizzieri has been tried to date; indeed, it would obviously be double jeopardy if it were.

MR. AMOROSA: Obviously not. Rizzieri pleaded guilty to possession of heroin with the intent to distribute

but that same charge is not in this indictment. He pleaded guilty in connection with a distribution he was about to make to Mr. Ferrarone --

THE COURT: I don't care whether the charge is in this indictment or not; I'm talking about the subject matter.

MR. JACOBS: What happened was there were three transactions --

THE CCURT: When?

MR. JACOBS: November 1972, February 1973, March 1973. At the March transaction Mr. Rizzieri was arrested. He was indicted in the Eastern District of New York because he was arrested in a gasoline station on Long Island -- excuse me, in Queens, at which time he had narcotics in his possession. He pleaded guilty on that charge. The Government never --

THE COURT: He pleaded guilty to the March transaction?

MR. JACOBS: Yes.

THE COURT: And the Government did not charge him --

MR. JACOBS: Not with any of the other transactions.

THE COURT: So he has not pleaded guilty with regard to those?

MR. JACOBS: But he has to the March offense.

THE COURT: Do you propose to question Mr. Ferrarone about all three of those transactions?

THE COURT: Yes, we do.

THE COURT: All right. As to the two, they can't have formed the subject matter of any plea, or they didn't, anyway, so that I don't see any reason why you can't ask him about those if you, in good faith, believe that they constitute transactions which were part of this conspiracy. Even as to the third it may be possible, I suppose, although I haven't thought about it, for you to question him about that, but it seems to me it raises the question which Mr. Goldberger raised -- I'm not saying that he is right about it, but it raises it -- but does it not also raise now -- the question that occurs to me -- a peculiar situation for Mr. Rizzieri in which the jury would have to be told -- I'm thinking out loud at the moment, not making a ruling -- later on that they couldn't find Mr. Rizzieri to have been a member of the conspiracy -- no, I suppose he could be charged with conspiracy in this indictment.

Well, it is very complicated. Is it necessary to go into the March -- it seems to me that going into the March proposition complicates the whole case for everybody considerably.

MR. AMOROSA: Judge, unfortunately, it is essential for us to do that.

THE COURT: Why?

MR. AMOROSA: Because Mengrone, who will be another Government witness, will supply additional proof with respect to Rizzieri's arrest, just by way of offer of proof. Mengrone will testify that when Rizzieri was arrested by the federal authorities he had several conversations with the Riccos in connection with that arrest, in which the Riccos made some incriminating statements about what they had just done with Rizzieri, and whether Rizzieri was going to give them up to the law since he was just taken into custody.

That totally corroborates the testimony of Rossi in this respect. After Rizzieri was taken, that is, arrested, Mengrone himself became involved with the Riccos. So it's essential -- it certainly is a foundation, an essential foundation for the testimony of Mengrone. If we were precluded from proving that Rizzieri was arrested through Ferrarone, who can testify to direct personal knowledge, Mengrone's testimony we would have to eliminate half of -- not half, but we would have to eliminate a substantial portion of Mengrone's testimony.

We want this to come in, that is, the March

possession, the one on which Rizzieri was arrested, in furtherance of the conspiracy, obviously, against everyone, and we are corroborating it -- corroborating Ricco's participation in the conspiracy as to that possession in March by Rizzieri through Mengrone, who will be able to tell us the Ricco side of the story when Rizzieri was arrested, totally corroborating Rossi.

THE COURT: All right. Let's go ahead and see what comes up.

MR. GOLDBERGER: Just one last point for the record, Judge.

I am more concerned, very frankly, with the November or December, the late 1972 transaction with Rizzieri, because it's clear from Rossi's testimony that Rossi and Rizzieri were partners in getting drugs from the Riccos during that period of time.

If Mr. Jacobs, Mr. Rizzieri's counsel, is going to admit the truth of these transactions, I certainly have an antagonistic defense. If he was going to say that it didn't take place, Judge, fine, there is no antagonistic defense, but --

THE COURT: I understand.

Mr. Jacobs, are you going to admit the truth of transactions on which Mr. Rizzieri has not pleaded guilty?

date, is that right?

A Around that time.

Q All right.

And you had first testified that you had gone to Dom Boy to see if you could negotiate for the 50 kilos; is that right?

A That's correct.

Q And then you also negotiated with a fellow named Louie; is that correct?

A To the best of my recollection, yes.

Q Did you also say on redirect examination in response to a question by Mr. Amorosa that you actually negotiated with Tony Ricco, Anthony Ricco, for that 50 kilos as well?

A That's correct.

Q And where did that negotiation take place?

A To the best of my recollection, on White Plains Road and Pelham Parkway by a car wash.

Q You and Anthony Ricco stood there by the car wash and you negotiated for 50 kilos; is that right?

A That is correct.

Q This is the same Anthony Ricco that you called Tony Bragiole; is that right?

A That's correct.

Q And this is the same Anthony Ricco that, as of January of 1973, that you ere no longer doing business with because there was a problem over money; is that right?

A That is correct.

Q But in March of 1973 you are negotiating for 50 kilos with him?

A That is correct.

Q You owed him money as of January of 1973, a total debt that wasn't paid; is that correct?

A That is correct.

Q You said that this club -- you were talking about the Rosedale Club; is that correct?

A That's correct.

Q And --

A In reference to what, sir?

Q Mr. Amorosa asked you a question about the club, this private club, is that the club that you were referring to?

THE COURT: We have heard about the club 500 times.

MR. GOLDBERGER: I never heard it referred to as the private club before.

Q Is that a private club?

A That's correct.

MR. GOLDBERGER: No more questions.

THE COURT: Mr.Brackley.

RECROSS-EXAMINATION

BY MR. BRACKLEY:

Q Sir, I take it that you now acknowledge that the first time you ever spoke about any of the alleged details of any of your activities with Mr. Indiviglia was in 1975, is that correct?

A I would say that is correct.

Q All right. And you said that on redirect examination, is that correct?

A I did.

Q And redirect examination would be after your direct examination and your cross-examination when Mr. Amorosa asked you about some of the things --

MR. AMOROSA: Objection.

THE COURT: Sustained.

Q In any event, when you say in 1975, you made these revelations, would it be after your plead of guilty which took place on January 7, 1975, that you recalled these details?

A I couldn't say.

Q Excuse me?

A I said I couldn't say. It could have been before my plea. I don't really know.

Q Your plea took place in January 7, 1975, is that correct?

A That's correct.

Q You spoke to Mr. Mesland somewhere around March or April of 1975 in preparation for your appearance before the grand jury, is that correct?

A That's correct.

Q So wouldn't it be fair to say, sir, thinking back on all the facts and circumstances as you have been doing, that the very first time you ever mentioned about any of these so-called details would be with Mr. Mesland after you took your plea some time in 1975?

A No, that is not correct.

Q Again, sir, let me show you what has been previously marked as 3501, 1958, and ask you to look at the very last paragraph and ask you once again, does that refresh your recollection as to when you first discussed your so-called details of any transaction with Mr. Indiviglia?

A As to Mr. Mesland, right, sir?

Q Yes.

A As to Mr. Mesland, I guess that is correct.

Q All right. Would that refer, sir, to the

transaction in City Island with the seafood restaurant?

MR. AMOROSA: Objection.

THE COURT: What is it? Would it refresh his recollection as to what?

Q As to whether or not you ever told Mr. Mesland about any transaction you claim to have had in the seafood restaurant in City Island or merely the so-called cocaine transaction of August 1972?

A It does not refresh my recollection.

Q So you still don't know?

A No.

Q Tell us, do you know who it is that you told in 1975 the details that you have testified to here?

A DEA agents.

Q Who?

A Steve Lowe.

Q Lowe.

A John Nolan.

Q Let me show you again a report dated April 8, 1975, which has been previously marked 3501-25, and ask you if you could read through that and tell us whether or not that is the agent you claim to have told these things to.

MR. AMOROSA: Objection to the form of the

question.

If he wants to show him that to refresh his recollection, no objection.

THE COURT: Wait a minute. He told you who the agent was. I don't know what you are asking him now.

Q Will you read the report and tell us if that is the agent who you told these details to?

THE COURT: He doesn't need to read the report. He can see who the report is made by.

You want to ask him who that -- if that report was made by the person to whom you refer.

Q That report was made April --

MR. AMOROSA: I object to anything contained in the exhibit.

THE COURT: Sustained.

MR. BRACKLEY: We are in 1975 period, Judge, and I would ask him --

Q Do you recall whether or not you told Agent Lowe this in 1975?

THE COURT: Lough , L-o-u-g-h.

MR. AMOROSA: Told him what?

THE COURT: The details, I gather, related to Indiviglia.

A I remember talking to Agent Lough, and I remember

talking to other agents, t[illegible].

Q In 1975? We are talking about, you recall now, I believe it was on redirect examination where you stated that the only time you ever mentioned any of these details as to what happened in the seafood restaurant, and that is what happened in the Rosedale Club outside with the bag full of cocaine was in 1975, isn't that right, you have said that on your redirect examination?

MR. AMOROSA: I object to that.

THE COURT: Overruled. Is that correct?

THE WITNESS: That I gave detailed information in 1975? I could have gave it in 1974, too. I don't remember. I remember talking about it in 1974. I don't know if I gave it into more detail, more scope, but I am saying now that the trial is in progress --

Q You did say on your redirect examination that you recall it as being in 1975. Do you wish to change that now to maybe 1974?

A No, I do not wish to change that. I am saying I spoke about Mr. Indiviglia in 1974, and I don't remember when in 1975, when I actually went into detail of the transaction that did take place.

Q I am now showing you a report dated --

MR. AMOROSA: I object to references as to

what the exhibit is. He can offer the exhibit and we can have it read to the jury.

THE COURT: Mr. Amorosa, you needn't make a speech I have said this repeatedly to Mr. Brackley myself. The jury will disregard the date of the report. If you want him to look at the body of it to see if it refreshes his recollection, you may, but don't tell the jury it is the Bible.

Look at that piece of paper and tell us if it refreshes your recollection as to when you gave these details for the first time.

I don't know if you have to read the whole report for that purpose.

Does that helpyou remember when you first gave them the details?

THE WITNESS: No, your Honor.

Q Do you recall when you first spoke to Mr. Mesland?

MR. AMOROSA: I object. Beyond the scope of redirect.

MR. BRACKLEY: Your Honor, he changed --

THE COURT: Overruled. If you are still talking about the details, Mr.Brackley, overruled.

Q Would it be fair to say, Mr. Rossi, thinking

back on it, that the very first time that you started to talk about any of the details, that would be what happened up in the Bronx seafood house, what happened outside of the Rosedale Club, would be to Mr. Mesland, who was preparing the case for the grand jury?

A No. Did I first tell him, talk to him about it?

THE COURT: Yes.

THE WITNESS: No. I could have spoken about it with agents, too.

Q What you could have done and what you would have done is different from what you did do. Tell us --

A To the best of my recollection, I spoke about it with agents and Mr. Mesland. I spoke about it with agents before I spoke about it with Mr. Mesland, but I don't remember --

Q You say now that you told an agent before you spoke to Mr. Mesland that Mr. Indiviglia told you there was two ounces of heroin in a garbage can in the Bronx, is that correct, sir?

A I didn't say that. I said I spoke of the case to agents. Are you asking me one instance, the first time when I spoke to Mr. --

Q Sir, just listen very carefully. You say that

Mr. Indiviglia put -- told you there was two ounces of heroin in a garbage can in the seafood restaurant in the Bronx, is that correct, sir?

A That is correct, sir.

Q Who did you tellthat to before 1975, if anybody?

A I don't remember.

Q YOu said something about some kind of a bagful of cocaine that was given to you while you were sitting in the passenger side of a car in front of the Rosedale Avenue Club some time in 1972, August, middle of August, is that correct, sir?

A That is correct, sir.

Q Who did you tellthat to before 1975?

A In other words, that specific transaction?

Q That's right, sir.

A I don't remember.

Q Now, who did you speak to before 1975 with respect to preparing your testimony for the grand jury in this particular case, before 1975?

MR. AMOROSA: Objection.

THE COURT: If he spoke to anybody about the grand jury testimony.

MR. AMOROSA: I would object to that, Judge, as beyond the scope.

THE COURT: Overruled.

A I spoke to Mr. Mesland.

Q Before 1975?

A About this individual transaction?

Q That is correct.

A I don't think before 1975. I don't remember.

Q Sir, isn't it fair to say that the only time you ever spoke about either of these two individual transactions that you testified to here would have been with Mr. Mesland after you took your plea in January 7, 1975, but immediately before you went into the grand jury on August -- April 17, 1975, wouldn't that be fair to say, sir?

A I don't know if it would be fair to say. I really don't.

Q Now, sir, let me show you what I believe has been previously marked as 3501-3 which is your grand jury testimony --

MR. AMOROSA: Objection to what it contains, your Honor.

Q -- in this case.

THE COURT: Overruled.

Q -- and I believe the last two pages refer to Mr. Indiviglia.

First before you read it, do you have any

recollection as of April 17, 1975, ever testifying in the grand jury that Mr. Indiviglia told you that he had placed two ounces of heroin in a garbage can in the Bronx seafood house, yes or no?

A Did I say that to a grand jury?

Q Yes.

A I don't believe I did, sir.

Q Would you say that the very first time you ever testified at all with respect to that transaction would be before this jury?

THE COURT: You used the word "testify."

A In a grand jury?

THE COURT: Or before any body, any jury.

THE WITNESS: In other words, would this be the first time that I spoke of that transaction?

THE COURT: Testified.

THE WITNESS: Testified? I believe it would.

End 1B

You have asked him that a lot of times. You asked him a lot of times whether hetalked to anybody before Mr. Mesland and he said he did.

Q Assuming that the notes there are Mr. Mesland's notes, just for the purpose of this question, would that refresh your recollection --

THE COURT: There has been no indication of a failure of recollection.

Q I now ask you whether or not reading the notes to yourself, whether or not Mr. Mesland is the first person --

THE COURT: If you want to ask him whether in reading the notes he wants to change his testimony --

Q Do you, sir?

A No.

Q Tell me who the agents is that you told that you received cocoaine from Mr. Indiviglia in the middle of August, 1972?

A I can't answer that like that. I can't answer yes or no or just give you the name of the agent.

Q Would you bear in mind that you have read through numerous reports --

MR. AMOROSA: Objection.

THE COURT: Sustained. Just ask him a question.

Q Tell us any agent who you told that information to prior to Mr. Mesland, that Mr. Indiviglia walked out of some club with some kind of a shopping bag that contained cocaine.

A I could have said it --

THE COURT: Don't tell us who you couy'd have told it to. Who, if you did tell it to anybody.

If you want to say I told it to one out of several people, you can tell us that.

MR. BRACKLEY: I don't know what he could have done.

THE WITNESS: I don't understand the question.

THE COURT: I will make you understand the question.

Forget that. Mr.Brackley is now asking you to tell us who you gave this information to before you gave it to Mr. Mesland, what agent?

If you can't name one, if you know that you gave it to one of several, you can name the several, but if you are thinking you might have, you must say you don't know whether you did or you didn't.

THE WITNESS: I don't know whether I did or I didn't.

MR. BRACKLEY: NO more questions.

in.

(In open court)

MR. AMOROSA: We have nothing further of this witness, your Honor.

THE COURT: Mr. Rossi, you are excused.

(Witness excused)

MR. AMOROSA: The Government calls Special Agent Donald Ferrarone.

D O N A L D F E R R A R O N E, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SIEGEL:

Q How are you employed, Mr. Ferrarone?

A I am a special agent with the Department of Justice with the Drug Enforcement Administration.

Q How long have you been a special agent?

A January of 1970.

Q Were you employed as a special agent throughout 1972?

A Yes, I was.

Q Were you employed as a special agent throughout 1973?

A Yes, sir.

Directing your attention to November of 1972, Agent Ferrarone, did there come a time when you acted as an undercover agent for the Drug Enforcement Administration?

A Yes, sir.

Q In the course of your work in November, did you pose as a wholesale buyer of heroin?

A Yes, I did.

Q When was that, if you can remember?

A It was on November 22, 1972. It was about 7:30 in the evening.

Q Could you tell the Court and the jury what happened?

A Earlier that day I had made arrangements to purchase --

MR. JACOBS: Objection to what arrangements he made.

THE COURT: Overruled.

A I had made arrangements to purchase a one-half a kilogram of heroin from Angiolillo. The arrangements consisted of my driving a Government car to a preselected area which was a service road which is just off the Cross-Bronx Expressway. It's actually in the area of what they call the Hill Grant circle.

The service road runs parallel to the Cross-Bronx

bag and I checked it for the weight and to see if it was heroin. I could see white powder through the plastic. I put it back inside.

I got back out of the car and went over to the blue Torino. I had the $18,000 on my person all along. I took the $18,000 out and I leaned in through the passenger side of the car and I threw it on the lap of Peter Angiolillo and I did get a good look at the driver at that time.

Q Do you see the individual who was driving the car in the courtroom today?

A Yes, I do.

Q Will you describe what he is wearing?

A He has a dark suit on. Pink shirt. He has long black hair, and he is sitting in that second chair.

MR. JACOBS: I will agree it's the defendant Rizzieri, your Honor.

MR. GOLDBERGER: At this time I will object and move for the withdrawal of a juror on the basis of the objections I previously made on the record.

THE COURT: All right.

Q What happened after you threw the money into the car?

A I went back to the Government car and got in it

kilogram came in.

Q That is the bag that was placed in your car?

A Yes.

Q And that contained this package?

A That's correct.

MR. SIEGEL: At this time we would offer Government's Exhibit 12-E in evidence.

MR. MITCHELL: Same objection.

THE COURT: It is received subject to the same objection and the same ruling.

(Government's Exhibit No. 12-E received in evidence.)

Q Agent Ferrarone, have you ever met a man named Albert Rossi?

A Yes, I did.

Q And when was that?

A February 5, 1973.

Q Would you tell the Court what happened on that date?

A Once again, there had been -- I made previous arrangements to meet Albert Rossi on the evening of February 5, 1975 for the purpose of negotiating to purchase heroin.

The area that was picked out was the -- was East

bsb-1 Ferrarone-direct 842

THE COURT: When was it?

THE WITNESS: February 8.

Q Tell the Court what happened at that time.

A Yes. Arrangements had been -- I had made arrangements earlier the day of February 8th to purchase one-eighth of a kilogram of heroin from James Rizzieri.

MR. JACOBS: Your Honor, I object to any arrangements he made unless he says he made it with Mr. Rizzieri.

THE COURT Tell us who you made the arrangement with, who you wpoke with.

THE WITNESS: I made the arrangements through the Government informant.

MR. JACOBS: Move to strike.

THE COURT: I will allow the jury to hear that testimony for the purpose, and for the sole purpose of explaining why Mr.Ferrarone went where he went. It doesn't prove that anybody but the informant told him to do it.

MR. GOLDBERGER: We are talking about February 8, 1973, so the record is clear.

THE COURT: So I understand.

MR. GOLDBERGER: Thank you.

THE COURT: The informant told you an arrangement had been made. What did you do as a result of that?

THE WITNESS: Then I -- we went to Woods Avenue

opening it, just looked at it. Left it in the car, got back out and went into the Government car where I had $3600 that was the price agreed upon for this eighth of a kilogram.

Q Where was that money located at that time?

A I had it secreted in the Government car, it was under the front seat, I believe, but I can't quite remember where it was.

It was in a littl brown paper bag. I then went back and I gave the paper bag to Rizzieri. He said that --

THE COURT: You gave the paper bag with the money in it?

THE WITNESS: Right. I gave it to him and he asked me is it all there, and I said go ahead and count it, and he said no, I believe you.

I took the heroin, got back out of the car and went to the Government car.

A few minutes later the Government informant came over and then I left the area by myself. I went to a prearranged -- I will go through with his, all right?

I went to a prearranged area where I was debriefed by my group supervisor, and I ran a field test at that time and we also initiled the plastic bag.

Q What did the field test indicate?

A Where did I get it?

Q Yes. Is this the package that you have previously indicated was handed to you?

A This looks like the package that I was describing to you.

Q How much did you pay for that package?

A $3600.

MR. SIEGEL: At this time we would offer Government Exhibit 13C in evidence.

THE COURT: Assuming there is no objection as with the prior exhibit, it is admitted in evidence with the same ruling.

(Government Exhibit 13C was received in evidence.)

THE COURT: We will take our recess at this time.

(Recess.)

(In open court; jury present.)

THE COURT: Proceed, please.

BY MR. SIEGEL:

Q Agent Ferrarone, directing your attention to March of 1973, did there come a time when you again acted in an undercover capacity?

A Yes, sir, in March 13,1973.

Q Did you again pose as a wholesale buyer of heroin?

A Yes,sir, I did.

Q Would you tell the Court when exactly this was?

THE COURT: He said March 13. What time?

THE WITNESS: Right. It was 7:30, quarter to 8:00 in the evening.

Q Would you tell the Court what happened at that time?

A Yes,sir. I went to -- I had made previous arrangements with a Government informant to meet James Rizzieri at that time in front of the Flaming Pit Restaurant on Westchester Avenue in the Bronx.

So at 7:30 I drove to the Flaming Pit Restaurant. I first didn't see James Rizzieri, so I had the Government informant go into the restaurant and a few minutes later Rizzieri came out and got into the car with me by myself.

He immediately told me that he had had some problems, told me what the problems were, earlier that week.

I asked him if becdause of these problems was there any reason why we couldn't continue to -- why I couldn't continue to purchase heroin from him. He said there was no problems. I said, well, if I would buy any more heroin from him, that I wanted a better grade heroin than I had been getting from him in the past.

He said that he was having problems with his

source; that one of his sources had dried out and that he had to go to some other people and they were giving him bad heroin.

He said he is now going to a source in Long Island. He said,"I can make a call and get you anything you want within an hour."

I said I didn't want anything that night, but that I would take something the next day.

Rizzieri asked me what time. I says two o'clock. He asked me how much. I said I would like to buy a quarter kilogram of heroin.

Q Was there any discussion of price?

A Yes, I will get to that. And I asked him how much.

He said $8500. I agreed on the price. Then we chose a location which was the American Gas Station just off the Grand Central Parkway as you head into the city, it would be on the west, westbound lane --

THE COURT: In Queens?

THE WITNESS: Yes, sir, in Queens. And there is a parking lot adjacent to the gas station and I said I would park near a phone booth in that area.

At that time I just shook hands with him and he got out of the car and left and I drove and spoke with

BEST COPY AVAILABLE

my group supervisor that night and told him what had happened.

And that was it.

Q Did you in fact meet with James Rizzieri the next day?

A Yes,sir, I did.

Q About when was that?

A It was two o'clock.

Q What happened at that time?

A I arrived in the parking lot a few minutes before two o'clock, I think it was about five to 2:00, and I parked the undercover car that I was driving right near a phone booth and as I was looking in the rear view mirror, I saw a new blue and white Buick pull right in behind me, maybe two car lengths behind me and it stopped, and I looked out the back window and I saw Rizzieri in the car with another man I didn't know at that time,Rizzieri was not driving, he was on the passenger side.

I got out of the car and met him bout halfway, and I says, is every thing all right?

And he pulled back his jacket and says, yes, I got it, and he had a brown paper bag stuffed in his belt.

We both went to the Government car at that time. When he got into the car he handed me the package. I

MR. AMOROSA: I certainly will do that.

MR.MITCHELL: I want to state the other objection.

On the testimony of this officer as to the last transaction, the source being a place in Long Island, backed up by the fact they met in Queens, so it would be more convenient, is this another conspiracy?

MR. AMOROSA: As we have said already, what Mr. Rizzieri says doesn't necessarily control. Mr. Rossi has testified on our direct case that Rizzier told him that he continued to get goods from the Riccos subsequent to their parting of the ways.

THE COURT: I understand. I am not going to rule now but the question for me to rule on is whether there is enough evidence here to decide that as a matter of law there is more than one conspiracy, and of course that question will have to be determined by the Court at the end of the Government's case.

MR. JACOBS: The conversation between Rossi and Rizzieri, according to Rossi, was on February 5th. This is March 14, five weeks later.

THE COURT: I understand that.

You could argue all these questions at the end of the Government's case.

got the drugs in the February transaction?

MR. SIEGEL: I will object again on the grounds of hearsay.

MR. JACOBS: Mr. Angiolillo is named as a co-conspirator in this indictment.

THE COURT: Overruled.

Q Did he tell you where Mr. Rizzieri got the drugs on the February transaction?

A Specifically where he got them, no, sir.

Q Did he tell you who he got them from?

A No, sir, he didn't.

Q Did Mr. Angiolillo tell you on the February transaction Mr. Rizzieri went to Long Island to get the narcotics?

A Yes, sir, he did. Excuse me. He said he was told.

Q By whom?

A Mr. Rizzieri, that that is where he went to get them.

Q You arrested Mr. Rizzieri in the gas station.

Was Mr. Donovan arrested with him?

A Yes, he was.

Q Was Mr. Donovan indicted with Mr. Rizzieri in the Eastern District of New York?

MR. AMOROSA: Objection as to relevance.

THE COURT: SUSTAINED.

Q Did Mr. Donovan inform you that Mr. Rizzieri got the drugs from Joseph Cimino and Eddy Castellano?

A That was two of the people. He gave me a few other names, also.

Q Did he say that Mr. Rizzieri usually got his drugs from Jimmy Cimino and Eddy Castellano?

A That is who he said he got it from at that time. He didn't say "usually."

Q He didn't say "usually"?

THE COURT: Let me be sure I understand this.

Mr. Donovan told you where he got the drugs. He told you what Rizzieri said to him about where he got the drugs?

THE WITNESS: Yes.

Q Didn't Mr. Donovan tell you he used to bring the drugs from Cimono and Castellano to Rizzieri?

A That is correct.

Q Did he tell you what period of time this was?

A He did give me a period of time. I don't remember the exact time he said. I don't remember the exact time period.

Q Did Donovan tell you that Mr. Rizzieri got the drugs from Mr. Ricco?

MR. AMOROSA: Objection -- withdrawn.

A Yes, sir, he did tell me that.

Q Got these drugs, the March 14th transaction?

A He said the March 14th transaction he did tell me it came from Mr. Ricco.

THE COURT: I thought we were talking about February. Now we are talking about March?

MR. JACOBS: March 14th, your Honor.

A I remember exactly what he said.

THE COURT: Did your previous testimony apply to the February transaction or March transaction?

THE WITNESS: We seemed to be jumping around.

I am talking about the last seizure of the one-quarter kilogram on March 14th.

THE COURT: You say on that day Donovan told you that Rizzieri --

THE WITNESS: He said that James Rizzieri told him that he had received the heroin that day from Anthony Ricco. He used the name Tony Bragiole.

MR. GOLDDERGER: I will have to object and ask it be stricken as hearsay and that the jury disregard the statement.

MR. AMOROSA: We object to that.

THE COURT: You can't object to an objection. I

will rule on his objection.

If you want to argue the objection, you are free to do so.

MR. AMOROSA: We desire to argue it.

The questions were asked and the witness answered the questions.

MR. GOLDBERGER: That doesn't make them any more proper.

THE COURT: He is moving they be stricken.

MR. AMOROSA: We oppose it.

THE COURT: The motion is overruled. Mr. Goldberger's motion is overruled.

Mr. Amorosa, you don't have to oppose it. Unless you say you agree, I assume you always oppose it.

Q In your conversations with Mr. Angiolillo and Mr. Donovan, how many different sources of supply for Mr. Rizzieri in the late 1972-early 1973 period were you told of?

MR. AMOROSA: Objection.

THE COURT: Sustained.

Q Now, the conversation you had on March 13th, the night before Mr. Rizzieri's arrest, can you tell us what Mr. Rizzieri said to you when you complained about the quality of the heroin?

A He said he had a source that was drying up or dried

out -- I don't remember the exact word -- and that he had to go to other sources, and sometimes when he went to these sources that they didn't give him the normal good quality that he was used to getting. He said if I didn't like the package I had gotten earlier, I should have brought it back to him and he would have given me my money back.

Q Is there anything more you recall with regard to that part of the conversation?

A Yes. He did say that he was dealing with someone and he used the words, "on Long Island," and he said he could make a phone call and go to Long Island, or he said he could make a phone call and have whatever I wanted, were the words he used, within an hour.

MR. JACOBS: No further questions.

MR. MERGER: No questions.

MR. MITCHELL: No questions.

THE COURT: Who represents Mr. Blase this afternoon?

MR. GOLDBERGER: I do.

I would assume Mr. Richman has no questions of this witness.

THE COURT: Let me explain, ladies and gentlemen. Mr. Richman is not here because he has the flu. He had it this morning and asked to be excused this afternoon and Mr.

4A rkb-1 Pearson-direct 943

(In open court; jury present.)

MR. AMOROSA: The Government calls Gary Pearson.

G A R Y P E A R S O N, called as a witness by the Government, being first duly sworn, was examined and testified as follows:

THE COURT: Mr. Pearson, keep your voice up so everybody on the jury and at the tables can hear you.

THE WITNESS: Very well, your Honor.

DIRECT EXAMINATION

BY MR. SIEGEL:

Q How old are you, Mr. Pearson?

A Thirty years old.

Q Where do you live?

A Somewheres in the United States.

Q How much schooling do you have?

A High school.

Q What did you do after leaving high school?

A Shortly thereafter I went into the Air Force in 1964.

Q How long did you serve?

A Four years.

Q What did you do in the Air Force?

A I was an air traffic controller.

Q What rank did you attain at the time of your

the appropriate time to explain to the Court whether he can link up this testimony.

MR. AMOROSA: We disagree. If the contention here is that the Government is proving multiple conspiracies, the time for that is at the close of the Government's proof or if the Court makes a finding that is so, you can act on it.

THE COURT: That is right.

I will allow you to go ahead.

(In open court.)

BY MR. SIEGEL:

Q My question to you, Mr. Pearson, what relationship did you have with the defendant JohnDiSalvo?

MR. VERBERG: May we have that as to a time?

THE COURT: We just finished talking about April of 1973.

Is that the period you are talking about?

MR. SIEGEL: Yes.

A I met John DiSalvo around January,February, in the winter spring of 1969, and we became pretty close friends at that time and around November of 1971, I went away. Prior to that, October, possibly the latter part of September, October, we engaged in narcotic transactions.

MR. MERBERG: Objection.

You were good friends, I take it?

THE WITNESS: Yes.

THE COURT: You had been good friends?

THE WITNESS: Yes.

Q Directing your attention again to this meeting in New Jersey, can you tell us who was present?

MR. MERBERG: Objection, for the same reasons we have taken at the side bar.

THE COURT: What is the date of the Jersey meeting?

MR. SIEGEL: The witness testified it was in April of 1973.

THE COURT: I assume the Government is going to connect those events with the subject matter of the indictment?

MR. SIEGEL: Yes, your Honor.

THE COURT: Proceed.

Q I believe you testified that you had a meeting in New Jersey in April of 1973. Could you tell us what happened at that time?

A In 1973, approximately April, John DiSalvo and myself had went and met a party known to us as Roy, and one Larry. Through these people we were in touch through them with a Boston party.

THE WITNESS: I seen them.

THE COURT: If you will tell us what you saw and who said what.

You came into the meeting. Did you sit down at a table?

THE WITNESS: John DiSalvo and myself went to Fort Lee, New Jersey, prior to a meeting scheduled to take place with a party from Boston.

Q What happened?

A We went to the Fort Lee Diner. We observed the area. We looked for surveillance in the area. Shortly thereafter Roy and Larry andanother party unknown to me arrived in another car, a separate vehicle. John DiSalvo and myself stayed clear of everyone there to a certain point. Roy and Larry were to meet with these people from Boston to negotiate for a sale.

THE COURT: How do you know they were to do so?

THE WITNESS: Because we were in telephone communications -- they were in telephone communication prior to that andRoy and Larry were speaking to us, primarily Roy and they were speaking to John and myself.

MR. MERBERG: I object to this.

THE COURT: We are getting away from things.

Are Roy and Larry claimed by the Government

Larry and another unknown --

THE COURT: You saw them talking with some other people, then they came back and reported to you?

THE WITNESS: That is correct, also via a telephone there.

THE COURT: Was Mr. DiSalvo with you when you got these reports?

THE WITNESS: That is correct.

THE COURT: Tell us what you were told in Mr. DiSalvo's presence.

THE WITNESS: Roy had said he had seen the money. I believe the sum was in excess of $30,000, that these people were there to buy a kilo of heroin, and we were to sell them the kilo of heroin.

THE COURT: What happened next?

THE WITNESS: We did not like the way the area looked --

MR. MERBERG: Objection, as to his opinion.

THE COURT: You at least were apprehensive?

THE WITNESS: Yes.

THE COURT: What did you do as a result of that?

THE WITNESS: I had conversation with John DiSalvo.

Q What was said in substance during that conversa-

the vicinity of a White Castle.

I left John and he approached these people that he had met in New Jersey.

MR. MERBERG: Was that in his presence? He said he left, and made some other statements.

A I didn't totally leave the area. I walked down the block and just stood in the doorway looking for surveillance.

THE COURT: What did you see?

THE WITNESS: I just seen John and others engaging in conversation.

Q What happened after that?

A After that John and myself had met and spoke briefly in the area where I was.

Q What was said at that time?

A At that time to the best of my recollection, more or less like let's call this off, it doesn't look good, and he had a telephone number where he could call and reach these people. However, we decided to call it off and never went through with any deal or further negotiations with these parties.

MR. JACOBS: Could we get conversations instead of " we decided"?

THE COURT: Did you both talk about calling it

off?

THE WITNESS: Yes.

THE COURT: I don't see you can do better than that.

Q What happened, did you both leave?

A Yes. I got in my vehicle. My vehicle was parked in that area. I got in my vehicle and left.

Q Did there come a time --

MR. MITCHELL: I will move on behalf of George Carrado for an instruction to the jury that it is not binding on Carrado at all.

MR. AMOROSA: We oppose that at this time and ask your Honor --

THE COURT: It isn't necessary for you to oppose it. I am sure you oppose it. If you are agreeing with it, then get up and tell me.

The motion is denied for the reason I believe I have informed the jury ten times at least in this case about the rules.

I will consider at the end of the Government's testimony whether these matters can be applied to one defendant or not and if I see they can, the jury then will hav to decide that.

Q Did there come a time after the incident in

April of 1973 that you described that you met with John DiSalvo at the Roosevelt Bar?

A Yes, there was.

Q When was that?

A Approximately May of 1973.

THE COURT: The hotel in New York, you mean, the Roosevelt Bar?

THE WITNESS: No, it is Ann and Tony's Bar, located in the Bronx.

THE COURT: I thought you said it was the Roosevelt Bar.

THE WITNESS: It has a dual name.

Q Who else was present at that time?

A Jerry Rubin, John DiSalvo and myself.

Q Can you tell us what happened?

A I did not overhear a conversation between Jerry Rubin and John DiSalvo, However, JohnDiSalvo left Jerry Rubin and approached me.

Q Did you see them talking?

A Yes.

Q Then John came over to you?

A Yes.

Q What did he say?

A At this time he advised me that Jerry Rubin

was looking for an eighth of a kilo of heroin and had asked John to supply it for him.

Q What did you say?

A I don't remember if I had answered that when he told me what happened. It was shortly thereafter --

MR. MERBERG: Objection. Might he be responsive?

THE COURT: Later that evening?

THE WITNESS: A few moments.

THE COURT: All right.

A A few moments after John told me he was going to see if he could get it and he would advise me again that evening.

We met again that evening. At this time John --

Q Where did you meet?

A At the Roosevelt Bar.

At the Roosevelt Bar John advised me when to take a ride and that he was able to procure the eighth of a kilo of heroin and some time between that conversation and driving to the point of pickup, he had told me that we would just drop the car off, get out of the car and go for a walk.

Q Did he tell you anything about how much the

/13/76
M 4b

Q Was it a through street or dead end, do you remember?

A It was a through street, I believe.

Q What happened after that?

A It was not that night, but the following day we proceeded to the Pelham Parkway section of the Bronx to a bar called the Golden Hour.

THE COURT: Who is "we"?

THE WITNESS: John DiSalvo and myself.

A (Continuing) We parked the car behind the Golden Hour.

Q Whose car were you using at this time?

A Initially we used John DiSalvo's car. To the best of my recollection, the second trip was also made in John DiSalvo's car.

Q When you say "initially," you mean when you picked up the goods?

A That is correct.

Q When you went to the Golden Hour, you were using your car?

A I am not sure. To the best of my recollection, we used Johnny's.

Q What happened when you got to the Golden Hour?

A We parked parallel to the Golden Hour, parallel

to White Plains Road. John got out of the car and said he would go get Jerry Rubin. He went and got Jerry Rubin.

They came back to the vehicle. At the time they came back to the vehicle, I had the package. I had reached under the seat and grabbed a brown paper bag and handed it to Jerry Rubin.

Within a few minutes after that, we had left the area and proceeded back to the Fordham section of the Bronx where I was paid at that time $250.

Q Who paid you the $250?

A John DiSalvo.

Q Was there any discussion between yourself and anyone else when you were handing the package out the window?

A Not that I recall, no.

Q Did there come another time shortly after the event you have just described when you again saw John DiSalvo?

A Yes, there was.

Within a couple of weeks of that incident, John DiSalvo had called me at my house and asked me to come down to the Bronx.

THE COURT: Is this about the middle of May?

THE WITNESS: Somewheres in May.

Q When was this in relation to the incident you have just previously described where you picked up the goods

and delivered them?

A Within a week or two thereafter. I went to the Bronx again and met John at the Roosevelt and at this time he had given me $150.

Q You met him at the bar?

A Yes. I met him at the Roosevelt Bar and at this time he gave me $150 and said he did another eighth with Jerry Rubin and it was really quick, and there was no need to contact me and everything went down okay, and John just paid me for it.

Q What was your relationship with John DiSalvo at this point?

A We were partners at this point.

Q Is that why he gave you the money?

A That is correct.

MR. MERBERG: If he knows.

THE COURT: Overruled.

Q How much money did he give you?

MR. MERBERG: Asked and answered.

THE COURT: Yes.

Q Did there come a time when you met with a man named Peter Mengrone in Mt. Vernon?

A That is correct.

Q When was that?

A I believe it was the latter part of May, 1973.

Q Where did you meet him?

A At Empire Ford, Stamford Boulevard in Mt. Vernon.

Q Was anybody else there?

A I was introduced to Peter through Anthony Zinzi.

Q At that time?

A Yes.

Q What happened after that?

A Peter approached me and asked me if I could procure cocaine for him at this time.

Q What did you say?

A I said I would check and find out.

Q Did he tell you anything about quantity, quality?

A He was looking for a kilo of cocaine.

Q Was there any discussion of price at that time?

A No, there wasn't.

Q What did you do after that?

A I proceeded to the Fordham area of the Bronx and met with John DiSalvo. I am not sure if it was the same day, or within a few days or a short period of time after meeting Peter.

Q Do you remember where you met him?

A Yes, at the Roosevelt Bar.

I told John what had happened and that Peter

5 rkmch

Mengrone wanted to buy a kilo of cocaine.

Q What did John DiSalvo say, if anything?

A We left the Arthur Avenue section --

MR. MERBERG: Objection; not responsive.

THE COURT: What did Mr. DiSalvo say at the bar?

THE WITNESS: He said, "We will take a ride and find out. We will take a ride and find out. We will see Jerry Rubin and find out if Jerry Rubin can get it."

Q What did you do at that time?

A We left the bar and proceeded to the Golden Hour.

Q Did you go in the bar?

A In the Golden Hour.

MR. JACOBS: Objection; no connection to this conspiracy.

MR. GOLDBERGER: Same objection; outside the scope of the conspiracy we are trying here.

THE COURT: I may so rule.

MR. MERBERG: May we approach the side bar?

THE COURT: Isn't it the same thing we just discussed?

MR. MERBERG: No, it's another matter.

(At the side bar)

MR. MERBERG: Your Honor, the difficulty I have is,

7 rkmch Pearson- 974

THE COURT: Before we have any further discussion, I invite the Government, either Mr. Siegel or Mr. Amorosa -- perhaps it would be preferable since Mr. Amorosa is in full charge that he spoke -- how it is claimed the events testified to up to now by this witness, and to be testified to by this witness, are related to the conspiracy?

MR. AMOROSA: We intend to show that John DiSalvo's connection for heroin in this period of time, 1973, was Angelo Ricco and Tony Ricco, Tony Bragiole.

THE COURT: You are free to do that.

How is this witness going to do that?

MR. AMOROSA: We don't necessarily have to have this witness identify the source.

THE COURT: I didn't say you do.

What is your claim as to the relevance with regard to the conspiracy, as distinct from the substantive count against Mr. DiSalvo,of this witness' testimony?

MR. AMOROSA: This witness will implicate DiSalvo in narcotics transactions in 1973 during the scope of the conspiracy. He will implicate him in a transaction involving Angelo Ricco, and it's the transaction he is talking about right now.

THE COURT: How will he do that?

MR. AMOROSA: In connection with this cocaine

transaction, he will say, this witness will, that during the course of it, he went to the Magic Carpet restaurant with John DiSalvo, a place where Peter Mengrone was associated with and about which there was some testimony. He spoke with Mengrone at that time and he saw Angelo Ricco at that time.

Another witness, Mengrone, will tell the other side of the story in connection with this identical transaction, that is, the cocaine that Mengrone was going to supply to the purchaser.

THE COURT: Are there anyother episodes that Mr. Pearson is going to testify to in addition to the one he has now started on?

MR. AMOROSA: Yes. In September or October -- I can't recall now myself, I can't recall what the witness will say -- either September or October, this witness gave Angelo Ricco some cocaine as a sample for Angelo Ricco to test, based on his prior relationship with Ricco and we will have that elicitied also from the witness.

THE COURT: Is that going to he the sum of his testimony?

MR. AMOROSA: I believe subsequent, or in the same period, September and October, we intend to have this witness testify to additional heroin transactions that he

the first time and the second time he said he gave him a cut, anyway.

THE COURT: What is your point?

MR. MERBERG: If you ultimately dismiss the conspiracy count on their consideration of the substantive count, when I say it's prejudicial to the defendant on the substantive count, later on we will not have an opportunity if you say, "Jurors, disregard the conspiracy count, or dismiss it against Di Salvo," that they have heard the other evidence which spills over onto the substantive count.

THE COURT: I don't think it's improperly prejudicial, if that is what you mean. Certainly they are entitled to show, even if there was no conspiracy count, that DiSalvo was involved in the transactions of narcotics.

If there is anything that is not related to the transactions specified in the substantive count and we get that far, I will be glad to give limiting instructions that only the substantive count is charged against DiSalvo, aside from the conspiracy, and that any other information simply has to go with regard to intention or identification and not with regard to the substance itself.

(In open court)

THE COURT: I think the witness just indicated that in trying to answer Mr. Mengrone's request he had gone to

12 rkmch Pearson-direct

see Mr. Rubin at the Golden Hour.

Is that correct?

THE WITNESS: Yes.

THE COURT: Continue, Mr.Siegel.

DIRECT EXAMINATION RESUMED

BY MR. SIEGEL:

Q What happened when you got to the Golden Hour?

A We met with Jerry Rubin. I asked Jerry Rubin if he could get us cocaine. He answered affirmatively and we received a price at that time.

Q What was the price?

A Approximately $20,000.

Q What did you do after you talked to Jerry Rubin?

Let me understand this. Who actually talked to Jerry Rubin?

A I spoke with Jerry Rubin, primarily.

Q Where did you speak to him?

A At the Golden Hour.

Q Any particular part of the bar?

A I don't recall.

THE COURT: Was Mr. DiSalvo with you?

THE WITNESS: Yes.

THE COURT: What did you do after he said yes?

THE WITNESS: I related this back to Pete Mongrone.

At the time I believe we were charging him $22,000.

Q When you finished talking to Jerry Rubin, what exactly did you do?

A I don't recall exactly what I did.

Q What happened after that?

A I related back to Pete Mengrone the price I had received.

Q Where was he?

A At Empire Ford. I don't recall if it was via telephone or I went there or not. I got back in touch with Pete Mengrone and we set a meet at the Magic Carpet in the Bronx for that evening or the next eveing. I am not sure.

Q Did you meet?

A That is correct.

Q Where did you meet?

A John DiSalvo and myself went to the Magic Carpet and as we entered the Magic Carpet, I asked where Pete Mengrone was. I was told he was in the back room. John DiSalvo went to the bar and I went to the back room.

There I spoke with Pete Mengrone. I asked him if he had the --

MR. MERBERG: I will object to this as being out of the presence of Mr. DiSalvo.

THE COURT: Mr. Mengrone is named as a co-conspirator.

You can tell us.

A I went to the back room and asked Pete Mengrone if he had the $22,000 at that time, and he told me no, that he was waiting for a party to come with the money.

Q Was there anybody else present in that back room?

A Yes, Angelo Ricco was. I was introduced to Angelo Ricco by Pete Mengrone. There was just a brief "hello" between him and myself because we had met prior to this.

MR. MERBERG: May he speak up?

THE COURT: Please speak up. It's important that we hear you.

A Angelo Ricco left the back room and he went out to the bar area, also.

Q What happened after that?

A I stayed there for just a brief period of time. I just spoke with Pete. Nothing actually -- the only information I wanted to know was whether he had the $22,000 or not, and the rest was just general converastion.

I left the back room and went the bar area and informed John DiSalvo at this time that Pete didn't have the $22,000.

Q What did John say?

A We waited. We had a few drinks. We were getting impatient at this time.

I went back and asked Pete Mengrone, "Where is the $22,000? We got the people waiting with the goods." And Pete Mengrone told me that he was waiting for a party known to me by the name of Nick to come back with the $22,000.

I then returned to the bar, told Johnny of this again.

At this time John and I spoke, and I told John what Pete had told me, that Nick was supposed to come with the $22,000. When I told this to John, John told me that Nick is with Jerry Rubin, so therefore there is something wrong with the deal here. It appeared to us at the time through conversation that we had that Pete Mengrone was supposed to give us the $22,000 to buy from Jerry Rubin, who was supposed to give the $22,000 to Nick, who was supposed to give it to Pete, ending up in what we had referred to as a circle jerk.

Q In other words, the transaction was circular?

A Yes.

Q What did you do after you had the discussion about the transaction with John DiSalvo?

A I told John -- first of all, I had blamed it on

17 rkmch Pearson-direct

A Yes, there was. It was shortly after that transaction --

THE COURT: How soon after?

THE WITNESS: In June of 1973 I had dissolved my partnership with John DiSalvo.

Q What was said at the time?

A I told John that I wanted to try to move by myself a little bit heavier, and I felt we were tying each other down and we were not able to make any amount of money. Any money we had made prior to this was minimal, and to dissolve the partnership.

Q Did you discuss your relationship with him in the future at all beyond that?

A Yes, I did. I told John if there was a chance, or if I did turn around and make big money, that there was a chance I would take him with me.

Q Did there come a time you acquired a substantial amount of cocaine from some individuals in Florida?

A Yes, there was.

Q When was that?

A September of 1973.

Q How did you get that cocaine?

A Through a robbery.

Q How much cocaine did you personally acquire from

that transaction?

A I received a half-kilo of cocaine.

Q Did you thereafter see Angelo Ricco?

A Yes, I did.

Q When?

A I went to Renzo Originals and I bought some shirts.

Q When was this? Excuse me.

A The early part of October 1973.

At this time Angelo was there.

Q Where was Renzo Originals?

A Morris Park Avenue in the Bronx. It's a men's clothing store.

Q What happened when you went to the store?

A I bought some shirts. I asked Angelo if I could speak with him in private. He said yes.

We left the front area and went into a back room.

At this time I had told him that I had some cocaine that was of excellent quality and I asked him if he wanted a sample. He said yes. I gave him a sample and told him I would be back the following day.

Upon returning the following day, I asked Angelo Ricco if he wanted to buy it. I gave him a price somewheres in the area of 22, 23 thousand dollars a kilo and he had

told me no, that he believed it was synthetic or he had someone check and they told him it was synthetic material.

Q What did you say?

A I didn't say nothing, really. I just told him it was not synthetic and shortly thereafter left.

Q I show you Government's Exhibit 17 marked for identification and ask if you can identify that.

A Yes, I can.

Q What is that?

A It's a photo taken at a fund-raising affair for I believe Mario Biaggi.

THE COURT: For what?

THE WITNESS: It's a fund-raising affair for Mario Biaggi.

Q Did you attend that affair?

A Yes, I did.

Q Who else was there with you?

A John DiSalvo and his family.

THE COURT: Who was there or who was in the picture?

MR. SIEGEL: I asked him who was there.

THE COURT: It's unclear when he looks at the picture.

Q Who is in the picture with you?

MR. MERBERG: Objection.

THE COURT: Put it in evidence.

MR. SIEGEL: At this time we offer it in evidence.

MR. MERBERG: May I see it, please?

THE COURT: Are you in that picture?

THE WITNESS: Yes.

THE COURT: It's received in evidence.

(Government's Exhibit No. 17 received in evidence.)

Q Directing your attention to the period around October, almost about the same time as the incident involving the sample of cocaine you have described --

MR. MERBERG: What year?

THE COURT: 1973.

Q -- did there come an occasion when you were contacted by a man by the name of Louis Guerra?

A Yes.

Q Where was that?

MR. AMOROSA: May we have a moment, your Honor, Mr. Siegel and myself, right here?

THE COURT: All right.

(Pause)

Q Do you remember where you met with Louis Guerra?

A You are referring to now the period of time October 1973; is this correct?

Q Yes.

A I believe at the Teepee Diner in the Bronx.

Q Did you have a conversation with him at that time?

A Yes, I did.

Q What was said in substance?

A In substance, Louie wanted to buy an eighth of a kilo of heroin from me and I told him I would go and see if I could get it.

Q What did you do after talking with Louie?

A Shortly thereafter, I proceeded to the Arthur Avenue section of the Bronx and again engaged in conversation with John DiSalvo.

Q Do you remember where you met him?

A Not exactly. Somewheres in the Fordham section.

Q What did you say to him at that time?

A I told him that I wanted to buy an eighth of a kilo of heroin and John told me he would check and get back to me.

It was shortly thereafter that John had contacted me. We met again. At this time he had said --

Q Do you remember where you met?

A No, I don't.

Q What did he tell you?

A He told me that he wanted me to step up from an eighth to a quarter of a kilo.

Q What did "step up" mean to you?

A In other words, instead of involving myself with an eighth of a kilo, to buy a quarter of a kilo.

At the time I was financially capable of handling the quarter-kilo.

I paid John $5,000 front money on the partial, $5,000.

Q What is front money?

A In other words, I gave him $5,000. I did not have -- the price at the time was $8,500 for the quarter. I didn't have $8,500. I gave him $5,000 up front and for him to go and procure the quarter of a kilo and to come back, and within a week's time I paid him another $3,500.

Q What happened after that?

A I went to my house. John DiSalvo came to my house and borrowed my car. He took my car and returned within a couple of hours, and told me that the stuff was in the car. He gave me my keys back and took off.

I then went -- at the time also I had received it in two eighth of a kilo packages.

THE COURT: You said Mr. DiSalvo came to your house, said the stuff is in the car and left?

THE WITNESS: Yes.

THE COURT: What did you do next?

THE WITNESS: I went to my car and left.

THE COURT: Was the stuff in the car?

THE WITNESS: Yes.

Q Did you subsequently deliver that?

A Yes. I made the one delivery to Louie Guerra and received $5,000 from him and the other eighth of a kilo I gave to a man to me known as Anthony Giacomelli.

THE COURT: We will adjourn for lunch at this time and return at 2:00 o'clock.

(Luncheon recess)

he gave the money to John DiSalvo. The relevance is obvious.

THE COURT: I am sorry,I didn't understand that.

(In open court.)

Q Mr. Pearson, what did you do with the money you got from Louis Querra?

A The $5000 I received from Louis Querra, I believe it was that five thousand that I gave up to a friend for a court case for a lawyer that he had needed at the time.

MR. MERBERG: If the Court please --

THE COURT: I will strike the testimony. I don't see what that has to do with this case.

MR. MERBERG: Thank you, your Honor.

Q You previously testified about an incident in which you gave a sample of cocaine to Angelo Ricco. Do you see Angelo Ricco here in the courtroom today?

A I do.

Q Would you describe what he is wearing?

A The man forward to me with the white vest on.

MR. GOLDBERGER: We will concede he has identified Angelo Ricco.

THE COURT: Thank you.

Q Mr.Pearson, have you discussed any of your testimony in this case with Peter Mengrone?

rkb Gerbino-direct 1085

THE COURT: Ladies and gentlemen, I am going to see if we can go to a quarter of 5:00 or some suitable time about then so we can make up a little bit of the slippage.

DIRECT EXAMINATION

BY MR. AMORSA:

Q Mr. Gerbino, by whom are you employed?

A I am employed by the Internal Revenue Service, the internal security division of the Internal Revenue Service.

Q How long have you been employed in that position?

A A year last August.

Q Who did you work for before you went with the IRS?

A Drug Enforcement Administration and prior to that, the Bureauof Narcotics and Dangerous Drugs.

Q How long were you working with the Federal narcotics agencies?

A Since December of 1969.

Q Were you employed on April 20, 1973, as a narcotics agent?

A Yes, I was.

Q Was that with the Bureau of Narcotics and

Dangerous Drugs?

A Yes, it was.

Q Which was later identified as the Drug Enforcement Administration?

A Yes.

Q On that day, sir, April 20, 1973, did you go to the vicinity of the Fort Lee Diner in New Jersey?

A Yes, I did.

Q Approximately what time did you go there, sir?

A Well, we had made arrangements for a meeting during which time I was to act in an undercover capacity and the meeting was to take place at approximately 3:00 P.M.

Q What time did you go?

A I got there a little bit after 3:00 P.M.

Q Was anybody with you when you went there?

A Yes.

Q Who was with you?

A An informant.

Q What was his name?

A John Jordan.

Q Was anybody else with you when you went there?

A Not when I arrived there. We were by ourselves, the informant and myself.

Q Were you aware there were other agents in the vicinity at that time?

A Yes.

Q Were they working surveillance?

A Yes.

Q Tell us in your own words, Agent Gerbino, what happened when you arrived there.

A The informant exited the car as prearranged --

THE COURT: Does that mean he got out of the car?

THE WITNESS: Yes.

A The informant got out of the car and met an individual who I came to know as Roy DeJesus, across the street by the Fort Lee Diner.

We had made arrangements to attempt --

MR.MERBERG: Objection.

THE COURT: Don't tell us the arrangements. Tell us what actually occurred.

A He spoke with this gentleman for a few minutes --

THE COURT: Jordan spoke to Roy?

THE WITNESS: Yes.

A (continuing) Both returned to the vehicle and entered the vehicle.

Q Was there a conversation inside the car?

A Yes.

that I had done business with John Jordan.

Q Did you represent to him that you were from a particular location?

A I told him I was from the New Jersey area.

Q What then happened, Mr.Gerbino, that day?

A Mr.DeJesus left the vehicle and engaged another Spanish male and a black male in conversation and came back to the vehicle. I told him that I had my $36,500 in the vicinity but I would have to leave and return with my partner.

Shortly thereafter, DeJesus left and I drove from the area with the informant.

Q Did there come a time when you went some place else that same day?

A I went to the Red Oak Diner which was also in Fort Lee, about a mile or two away and picked up my partner at that time.

Q Who was your partner?

A Special Agent Vincent Crovetti.

Q What did you and Crovetti and the informant do?

A We drove back to the diner with the $36,500.

Q Was that official advance funds?

A Yes.

Q Government money?

A Yes.

3A

1/13/76
3B PM

1 rkmch Gerbino-direct

Q What did you do there?

A DeJesus saw us again and came back to the car and we told him we had the money. He sat in the back seat with Special Agent Crovetti, and we allowed him to count the money to show that we were ready to do business.

At this time, DeJesus stated he thought there were police in the vicinity, and he didn't want to do the deal at the Fort Lee Diner. I suggested to him that we would move several blocks north to another diner called the Plaza Diner, which we in fact did.

Q How did you go up there?

A We drove to the Plaza Diner.

Q Who was with you when you drove?

A The informant, Special Agent Crovetti and Roy DeJesus.

Q Where were the other two people you had seen DeJesus with, if you know?

THE COURT: The black man and the Hispanic man?

MR. AMOROSA: Yes.

A They were in the vicinity. I don't know where they were.

All during this period of time, I saw --

MR. MERBERG: Objection. I don't think there is a question before him.

Q Tell us what you saw and what happened that day.

MR. GOLDBERGER: Before he answers, I have to object, a continuing objection in regard to this testimony as not being involved in this conspiracy.

THE COURT: I note your objection.

Q Go ahead and continue.

A Just prior to us leaving, while I was parked on Lemoine Avenue and Fort Lee, I noticed a white male who I later came to know as John crossed the street drinking a cup of coffee, and he just stood in front of the diner and was observing me, but at this point I wasn't sure who he was. A little bit later on --

Q Tell us what happened when you got to the Plaza Diner.

A We parked in a large parking lot behind the Plaza Diner and DeJesus, myself, Special Agent Crovetti and John Jordan walked to the diner.

It was during this period of time, during this walking period of time that Roy DeJesus exposed a handgun that he had in his belt, and we discussed that and he said one would have to carry a gun when doing business like this, and I didn't say much beyond that, and we entered the diner and seated ourselves at a table.

Q Who was sitting down at the table?

A Roy DeJesus, myself, Special Agent Crovetti and John Jordan.

Q Did you reveal your true identity, or Crovetti?

A We never did.

Q Was there a conversation at that time?

A Yes. We discussed the delay in the kilogram of heroin arriving. We told him that we had our money and we were prepared to do business.

He left our table several times, I can't honestly remember how many different times, to check on his people, as he put it.

A little bit later on, around 5:00, one of the men, actually both men who I had initially observed on the street at the Fort Lee Diner entered the diner and sat at the counter.

Q Is that the black man and Hispanic man?

A No, the two white individuals. The black man and the Hispanic man occasionally came in and out of the diner; I can't recall how many different times.

Q When had you seen the two men come into the diner and sit at the counter? When had you seen them before that day?

A Before that particular day?

Q You saw them in the Plaza Diner. Prior to that

did you see them on the same day?

A I saw them during the initial meeting.

Q That is what I am asking you.

A I saw them during the initial meeting when I returned with the money. I saw the one man again who came to be known as John, and I then again saw him enter the Plaza Diner.

Q Who were you sitting with when you saw these two white men sit down at the counter?

A Special Agent Crovetti, John Jordan and Roy DeJesus.

Q Tell us what happened after that.

A We stayed and continued our discussion, the same four individuals, for a few minutes, and sometime around 5:00 o'clock the man who I knew as John joined -- came to the table and said, in so many words, "I am the boss. I am the man," and he told DeJesus to leave and he told him to take whatever other people were with him away from the scene, and he sat down then and engaged myself and Special Agent Crovetti in conversation.

Q What was the other white male doing?

A He was not in my total view the whole time. I assumed he remained at the counter.

Q Would you look around the courtroom and see if this white male who sat down with you is here?

5 rkmch Gerbino-direct

A Yes, he is.

Q Would you describe what he is wearing?

A He has a white shirt on. He has a dark suit. It appears to be brown. His hair is beginning to thin on the top.

THE COURT: Where is he sitting?

THE WITNESS: He is sitting directly behind the gentleman in the light tan suit.

Q Would you further describe him?

A From my recollection of his description, I believe he has green eyes --

Q Walk down here and point him out, sir.

A All right.

This gentleman (indicating).

MR. MERBERG: We will stipulate. I was not clear.

THE COURT: It is all right.

Have you since learned his actual name?

THE WITNESS: Yes, John DiSalvo.

THE COURT: You might as well call him John DiSalvo from here on in.

Q Was there a conversation after Mr. DiSalvo sat down?

A Yes.

Q Who was present?

wrong with this deal, in so many words --

MR. MERBERG: I object to this characterization.

THE COURT: You don't need to keep repeating "in so-many words," because I am not quite sure what you mean by it. I think you mean it is the substance of it.

A (Continuing) He told the informant that if something went wrong with this deal, he would be the first one to get it, that he was a dead man.

Q Was anything else said at that time?

A Yes. He told Special Agent Corvetti and myself that if we weren't who we purported to be, namely, that if we were some sort of police agency, he would not allow himself to be arrested, that his wife and family wouldn't see him in handcuffs and his name wouldn't be in the paper as an individual having been arrested, and that we would probably get hurt, and indicating to me that we might even get killed.

MR. MERBERG: Objection to what he indicated unless it's in a conversation.

MR. AMOROSA: He is indicating the conversation, I believe.

THE COURT: That is right.

THE WITNESS: That is the conversation.

Q What day of the week is this?

A Good Friday.

Q What happened after that, sir?

A Mr. DiSalvo stated he had to make a telephone call because he wanted to discuss the situation, and he left my view because there were telephones in the front of the diner. I couldn't see where he went when he walked to the front of the diner.

He returned in about five minutes and, again in substance, stated that the deal is off, there are police in the area.

We discussed the possibility of a meeting in the future and he said, "Come to the Bronx this evening," and we made an arrangement to meet at 8:00 o'clock that evening on Fordham Road in the Bronx in front of a White Castle restaurant.

Q What then happened?

A He left after a few minutes and myself, Special Agent Crovetti and John Jordan left by the rear exit of the diner.

Q Where did you go that evening?

A Special Agent Crovetti and myself, without John Jordan, went to the White Castle restaurant on Fordham Road and Lorillard in the Bronx.

We arrived at approximately a quarter of 8:00, and John DiSalvo was walking down the street. We met, we

Go ahead.

Q What happened after he sat down?

MR. MERBERG: Objection. He already asked him and he gave him some conversation.

THE COURT: He is just starting to give the conversation that occurred at this point.

Go ahead.

A Agent Gerbino asked this individual who he was. The man stated --

MR. MERBERG: Objection. Same exact remarks made three or four minutes ago. Mr. Amorosa knows that.

THE COURT: I don't care if it is the same exact remarks. I can't remember. It can't be that clear-cut. Let's go ahead and stop the objections.

Q I am asking what happened when he sat down.

THE COURT: It hasn't been covered to this point as I can recall.

A Agent Gerbino inquired who this individual was. The man stated his name was John, that he lived in the Bronx, and Agent Gerbino said, "Are you ready to do business," and the man said yes,"I can do the business at any time. I can do as much as you want," referring to the kilo of heroin, and said, what is the problem? He said, my people have told me --

rkb-11 Crovetti-direct

THE COURT: Who said this?

THE WITNESS: This individual --

THE COURT: Who said "What is the proboem?"

THE WITNESS: Agent Gerbino asked him what is the problem. The individual stated that "My people have told me there are police in the area and I don't like the looks of things. I prefer to do business in the Bronx."

He then questioned the confidential informant as to how well the informant knew us and asked him whether or not -- how many times, rather, he had done business with us in the past.

Q Who is asking this?

A Mr.DiSalvo is asking the confidential informant.

He went on to say to the confidential informant that if Agent Gerbino and myself were not what we were supposed to be, I assume that he means buyers of heroin, that he was --

MR. MERBERG: Objection.

May we approach the side bar?

THE COURT: All right.

(At the side bar.)

MR. MERBERG: If the Court please, I would object to this type of testimony. It is not probative on the question of whether or not there was a narcotics trans-

action, and these are now -- it is now possible evidence of other crimes.

THE COURT: It is exactly the same testimony we had from Gerbino.

MR. AMOROSA: It is corroborating it.

MR. MERBERG: I didn't know what the remarks were until they were said. This time I know they are irrelevant.

THE COURT: I don't consider them at all irrelevant. Clearly these were acts in furtherance of the conspiracy and certainly relevant with regard to his participation in the conspiracy.

MR. MERBERG: If you assume this is part of the conspiracy the Government has charged in this case.

THE COURT: I will have to rule on that.

(In open court.)

Q Would you continue what you were just about to tell us?

A Mr. DiSalvo then questioned, as I said before, the confidential informant. He told the confidential informant that if Agent Gerbino and myself were not what we were supposed to be and anything went wrong, that he would be the first to get it, that he would be dead.

He then told Agent Gerbino and myself that as

Tk 4B rkb-1

MR. BLOSSNER: Defendant Indiviglia wishes to join in the application with Mr. Jacobs as to the grand jury presentation and we would go further in stating that the grand jury presentation overall as to Mr. Indiviglia was basically unfair in the associated questions that were put before the grand jury. For instance, do you know him to be associated with; do you see him in the company of, and those questions that would -- this is the phrase used within the grand jury, Poops, Poops, is he associated with, do you see him in the company of.

Further, the only questions as to Mr. Mengrone placed before the grand jury, the U. S. Attorney clearly knew could not go beyond a reasonable doubt in an eventual indictment --

THE COURT: Gentlemen, I am not going to add to my rather considerable duties with regard to this case and everything else, by reading all of the grand jury testimony in this case as a matter of routine. I have read it with regard to Mr. Richman, because he assured me it was only a couple of pages and so forth, and I had the opportunity to do it during the course of the case.

I have expressed my concern about the situation vis-a-vis his client.

If any of you would wish to do more than protect

MR. AMOROSA: The Government calls Peter Mengrone.

P E T E R M E N G R O N E, called as a witness by the Government, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. AMOROSA:

Q Mr. Mengrone --

MR. RICHMAN: Your Honor, I can't see the witness.

THE WITNESS: That is a compliment.

Q Mr. Mengrone, do you reside somewhere in the United States?

A I do, sir.

Q Where did you grow up?

A In Manhattan, the Bronx and Westchester County in various stages.

Q Where did you go to high school?

A Mt. St.Michael Academy in the Bronx.

Q Did you graduate?

A Yes, sir.

Q Where did you go to college?

A Fordham University.

Q Did you graduate?

rkb-4 Mengrone-direct

A I did, sir.

Q What kind of degree did you take?

A Bachelor of Science and Economics.

Q Where did you go to graduate school?

A I attended Fordham University School of Law for two years.

Q Did you graduate from the law school?

A I did not.

Q Where did you work after you got out of law school?

A The Treasury Department, with the Internal Revenue Service.

Q What were you with the IRS?

A A revenue officer.

Q How long were you a revenue officer?

A Five years.

Q Where were you employed as a revenue officer?

A 2467 Jerome Avenue, in the Bronx.

Q What did you do after you left the IRS?

A I became the relocation manager for the Urban Renewal Development in Mt.Vernon, New York.

Q Keep your voice up so we can hear you.

A I was the relocation manager for the Urban REnewal Project in Mt.Vernon, New York.

rkb-5 Men e-direct

Q How long did you work in that job?

A Approximately two years.

Q What did you do after you finished there?

A I became the legal investigator for the City of Mt. Vernon, New York.

Q How long were you working there?

A About two more years.

Q After that, can you recall?

A I went over to the City of Yonkers and I was the relocation manager for the City of Yonkers with their Urban Renewal Project.

Q How long were you working over there?

A Approximately a year before I became disabled.

Q Did you plead guilty to a State narcotics indictment charging you with possession of narcotics?

A I did.

Q When did you plead guilty to that?

A Approximately April of 1974.

Q Were you sentenced?

A I was, sir.

Q What sentence did you receive?

A Five years probation.

Q Are you now on that probation?

A I am, sir.

Q When were you sentenced?

A Sentencing was approximately May of 19 -- April of 1974.

Q When were you arrested on the charge which formed the basis of your indictment?

A Wednesday evening, October 25.

Q Which year?

A 1973.

Q Was that your first and only narcotics arrest?

A Yes, sir.

Q Who arrested you, Mr. Mengrone, State authorities or Federal authorities?

A State authorities, sir.

Q Was it a State indictment?

A Yes, sir.

Q You agreed to cooperate with the Government with respect to your narcotics activities, Mr. Mengrone?

A I did, sir.

Q When did you begin to cooperate with State officials in connection with your narcotics activities?

A About a week after I pleaded guilty to the charges. That would be April of 1974.

Q When did you begin to cooperate with the Federal officials with respect to your narcotics activities?

THE COURT: I take it there is no objection?

It is received.

(Government Exhibit 35036 was received in evidence.)

Q Where did you reside in October of 1971?

A 630 Gramerton Avenue, Mt.Vernon, New York.

Q At that time October '71, where did you work?

A Empire Ford in Mt.Vernon, New York.

Q Did you have any other job in October of '71 besides the job at Empire Ford?

A Yes.

Q What was that job?

A I was the bouncer at the Four Winds Night Club on Bronx River Road in Yonkers.

Q What did you do at Empire Ford?

A I was the finance and insurance manager for the dealership.

Q How long did you have your job in the Four Winds as a bouncer?

A Approximately the end of October 1971 to September of 1972.

Q Do you know a person by the name of Angelo Ricco?

A I do, sir.

Q How many times have you met him in your life?

Have you met him on more than one occasion in your life?

A Yes, sir.

Q Look around the courtroom and see if he is here Mr. Mengrone.

A Yes, sir.

MR. GOLDBERGER: We will concede he knows Angelo Ricco.

That that is Angelo Ricco there.

THE COURT: Is that Mr. Ricco?

THE WITNESS: Yes.

Q Do you know a person by the name of John DiSalvo?

A I do.

Q Have you met him on more than one occasion in your life?

A I have, sir.

Q Will you look around the courtroom to see if John DiSalvo is here?

A He is.

MR. MERBERG: We will concede that identification.

Q Do you know a person by the name of James Rizzieri?

A I do, sir.

Q Have you met him on more than one occasion?

A I have.

Q Will you look around the courtroom and see if Mr. Rizzieri is here?

A I believe he is behind counsel holding up the papers.

MR. JACOBS: Concede the identification.

THE COURT: All right.

Q Do you know a person by the name of Charles Indiviglia?

A I do.

Q Have you met him onmore than one occasion in your life?

A I have, sir.

Q Would you again look around the courtroom and see if Indiviglia is here?

A He is.

Q Would you point him out, please, and describe what he is wearing?

A He is seated behind the gentleman with the gray suit, pink shirt. He is wearing a dark suit with a blue tie, wearing glasses.

Q Would you further describe what he is wearing?

MR. BLOSSNER: We concede identification.

THE COURT: All right.

Q Do you know a person by the name of Anthony Ricco?

A I do, sir.

Q You also know he is known as Bragiole?

MR. GOLDBERGER: Objection.

Q Do you know him by any other name other than Angelo Ricco?

A He has been known to me as Uncle Tony or Tony Bragiole, either one or both.

Q Do you know a person by the name ofAlbert Rossi?

A I do, sir.

Q How long did you work as a bouncer at the Four Winds?

A From October '71 up until September of 1972.

Q Where is the Four Winds again?

A Bronx River Road in Yonkers.

Q Is it a bar and restaurant?

A Yes.

Q Can you describe its layout to us, just briefly?

A I can, sir. It contains two bars, a front bar just as you enter the restaurant and all the way to the back of the establishment is a second bar which had been

Q Was Fava the true owner or owner on paper?

MR. JACOBS: Objection. Relevancy.

THE COURT: It is also a question of his knowledge.

A To the best of my knowledge, Tony Fava was the owner on papers. The undisclosed owners were Bastaino--

THE COURT: What is the source of your knowledge?

THE WITNESS: They gave all the orders --

MR. GOLDBERGER: I askit be stricken.

THE COURT: I will strike allegations regarding ownership. If you want to tell us they own the place on the basis of personal knowledge, that is something else.

Q While you were working at the Four Winds, did you ever see Angelo Ricco there?

A I did.

Q How many times did you see Angelo Ricco there?

A Numerous occasions. Twice a week, sometimes three times a week.

Q Did you ever see Al Rossi in the Four Winds?

A Yes, sir.

Q How many times did you see Al Rossi in the Four Winds?

A Two, three times a week. Steady customer.

Q Did you ever see Al Rossi with Angelo Ricco

at the Four Winds?

A Yes.

MR. JACOBS: I object to leading.

THE COURT: Overruled on that question.

Q Did you ever see Al Rossi with Angelo Ricco at the Four Winds?

A I did, sir.

Q How many times would you estimate you saw them together at the Four Winds?

A Two, three times a week. Whenever he would show up they would be together.

MR. GOLDBERGER: I am going to object and ask for a side bar. I think it is important.

THE COURT: All right.

(At the side bar.)

MR. GOLDBERGER: Your Honor, my reading of the 3500 material indicates that Mengrone was not involved in, nor did he participate in any conversations concerning narcotics when he was there at the Four Winds Bar.

The only purpose of these questions would be to show that perhaps Rossi and Angelo Ricco were together.

That is not evidence of being involved in a narcotics conspiracy or narcotics crime, the fact they were together in a bar.

A Maybe five or six times.

Q When did you begin seeing Rizzieri at the Four Winds?

MR. JACOBS: Objection. Asked and answered.

THE COURT: He said the end of the summer of 1972, towards the latter part.

Q Did you ever see Rizzieri leave the Four Winds with anyone?

A Yes, sir.

Q Who did you see him leave the Four Winds with?

A With Albert and Angelo Ricco.

THE COURT: Who?

THE WITNESS: Albert Rossi and Angelo Ricco.

Q In the Four Winds, did you ever see --

THE COURT: I think that needs clarifying. All three of them together?

THE WITNESS: Yes. I have seen the three of them leave together or sit at the bar together on different occasions.

Q Prior -- did you ever overhear any conversations between Al Rossi and Angelo Ricco?

A No, sir, I did not.

Q Did you ever overhear any conversations between and among Al Rossi, James Rizzieri and Angelo Ricco?

A No, sir, I did not.

Q Did I say Anthony Ricco on the prior question? My questions are with respect to Angelo Ricco.

A I have never heard any conversations at the Four Winds between any of those parties, sir.

Q Did you know Anthony Ricco while you were working at the Four Winds?

A No, sir.

Q Did you know Charles Indiviglia while you were working at the Four Winds?

A No.

Q Did you ever see John DiSalvo at the Four Winds?

MR. JACOBS: Objection.

THE COURT: Overruled.

A I did.

Q How often did you see John DiSalvo at the Four Winds?

A Numerous occasions. Three, four, five times a week.

Q Did you ever see John DiSalvo meet any of the other defendants now on trial at the Four Winds?

A I have seen him have a conversation with Angelo Ricco, or with James Rizzieri, but that is the only ones.

BEST COPY AVAILABLE

roughly speaking.

A Once, twice a week, possibly.

Q Did there come a time, Mr. Mengrone, when you bought a bar?

A Yes, sir.

Q What was the name of that bar?

A The Magic CArpet Lounge.

Q Where was that located?

A 676 Morris Park Avenue in the Bronx.

Q When did you get into that bar?

THE COURT: You mean when did he buy it?

MR. AMOROSA: Yes.

A We opened it in September of 1972. We began the purchasing of it in May of 1972.

Q Was it a bar and restaurant also?

A Yes.

Q Can you tell us the layout of the Magic Carpet?

A It is shaped something along the lines of say a railroad flat. You enter the doorway and there is a 40-foot bar on your left and there is a juke box and telephone on the right. You go down about 40 feet and you come to the dance floor area where the dinner tables are. About 30 feet past that you come to the stage. Four feet behind that is the men's room and ladies' room.

BEST COPY AVAILABLE

Off to the left and into the back is the kitchen.

Q How much did you buy it for?

MR. JACOBS: Objection. Relevancy.

THE COURT: Sustained.

Q Did you have a partner?

A I did, sir.

Q Who was your partner?

A My cousin, George Kunick.

Q Did you retain your job at Empire Ford in September of 1972 when you went into the Magic Carpet?

A I did, sir.

Q How often were you at the Magic Carpet, Mr. Mengrone?

A Almost nightly.

Q For what period of time?

A From September of '72 when we openedup until approximately June 1973.

Q After June of 1973 --

A I opened it in '72 and I operated it from September '72 up until June of 1973, and I am in there constantly during that time period.

Q From June of '73 until the time of your arrest, were you in the carpet?

A Once or twice a week, just occasionally.

Q Did you ever see Angelo Ricco in the Magic Carpet?

A I did, sir.

Q When did you see him in the Magic Carpet, for the first time?

A The night we opened the place, September '72.

Q How often was he in the Magic Carpet thereafter?

A He was a steady customer. He was there two, three, four times a week.

Q Did you know Anthony Ricco in this period after you bought the Magic Carpet?

A Yes, sir.

Q Did he come into the Magic Carpet?

A Yes, sir.

Q How often did he come into the Magic Carpet?

A Two, three times a week.

Q Did anybody usually come in with Anthony Ricco?

A Charlie Poops or a lady friend. Mostly Charlie.

Q Charlie Indiviglia?

A Yes.

Q To your knowledge, sir, what is the relationship between Angelo Ricco and Anthony Ricco?

A Angelo Ricco is the nephew of Anthony Ricco.

Q How often did Indiviglia and Anthony Ricco

come into the bar?

MR. JACOBS: Objection. Asked and answered.

THE COURT: Sustained. He said two and three times a week.

Q Over what period of time?

A September '72 right through until June 1973.

Q Were you the true owner of the Magic Carpet until your arrest in October of 1973?

A The owner on paper? I was the owner on paper up to the time of my arrest.

Q How long were you the true owner?

A Up until June, the early part of June 1973.

MR. GOLDBERGER: Let's get a definition of what true owner means.

THE COURT: You had the true economic interest?

THE WITNESS: At that time.

Q Did you ever see Albert Rossi in the Magic Carpet?

A Yes.

Q What period of time?

A September of '72 up until around Christmas the same year, December 1972.

Q Did you ever see James Rizzieri in the Magic Carpet?

A I did.

Q What period of time?

A September '72 up until about March of 1973 was the last time I saw him.

Q Who did Rossi usually come into the Magic CArpet with, if anyone?

A Either with Rizzieri or with his girl friend.

THE COURT: By his girl, Rossi's girl?

THE WITNESS: Yes. Rizzieri came in with his own girl friend.

Q How many times would you estimate that Rizzieri and Rossi came into the Magic Carpet from September of 1972 until about December of 1972 or thereabouts?

THE COURT: Together?

MR. AMOROSA: Yes, sir.

A Three times a week. That is 12 times a month times 3, about 36 times.

Q Who did they associate with when they came into the Magic Carpet?

MR. JACOBS: Objection to the form of the question.

THE COURT: Sustained.

Q Who did you see them go to if anyone when they came into the Magic Carpet?

MR. GOLDBERGER: Objection. It is still leading.

He is inferring an answer should be given.

MR. AMOROSA: I said "who." How could it be leading.

MR. GOLDBERGER: It is leading.

THE COURT: It is leading to the extent it suggested he went to anybody.

Q Did you see him go to anybody when they got into the Magic Carpet?

A Yes.

Q Who did you see them go to?

A Angelo Ricco, Charlie Poops, Tony Bragiole.

Q How many times would you estimate you saw this occur?

A As many times as they were there, that is as many times as they met.

Q Where would they meet in the Magic Carpet, Mr. Mengrone?

MR. JACOBS: Who is "they"?

Q Rizzieri, Rossi, Anthony Ricco, Angelo Ricco and Indiviglia.

A It depends on the nights we are talking about. If the restaurant was crowded, they would go outside and take a walk down the block or sitby a car and talk.

THE COURT: Youdidn't watch them go down the

block?

THE WITNESS: I could see them go out and down because I used to stay by the window. If the place wasn't that crowded, they would either go to the bathroom to talk or sit at a side table or ask if there was anyone in the kitchen, if they could use the kitchen a minute and the cook or somebody else would wait outside until they were finished.

Q Did you ever see any one of those people or any two of those people go into the bathroom together?

A I did, sir.

Q How many times would you estimate?

A Six, seven times. Different combinations of people.

Q Tell us the different combinations.

A Angelo possibly go in with Jimmie Rizzieri or Al Rossi. I seen Tony Bragiole go in with Albert or Jimmie Rizzieri and on several occasions, Charlie go in with Tony Bragiole.

Q Was there a particular place in the Carpet where you stood or sat?

A Yes, sir.

Q Where was that?

A I stayed at the table nearest the bandstand or I sat at the chair which is right bythe front of the

Carpet by the telephone booth.

Q Mr. Mengrone, did you ever overhear any conversations in the period from September of 1972 through December of 1972, thereabouts, while these various meetings were going on that you just described?

A I did not, sir.

Q Did you yourself --

MR. GOLDBERGER: Then I object and move that his prior testimony in that regard be stricken.

THE COURT: Overruled.

Q Did you yourself speak with Anthony Ricco in this period?

A Yes, sir.

Q Did you speak with Angelo Ricco in this period?

A Yes, sir.

Q Charles Indiviglia?

A Yes.

Q Albert Rossi?

A Yes, sir.

Q James Rizzieri?

A Yes,sir.

Q These people were your customers in the bar?

A Yes, sir.

Q Who were you best customers in the bar, Mr.

Q After that night, did you ever see Al Rossi in the Carpet again?

A Never when I was there.

Q Did you see James Rizzieri?

A Yes, sir.

Q How frequently?

A Two, three times a week; sometimes four times a week.

Q Who did he meet with when he came into the Carpet?

A Angelo Ricco, Charlie Poops, Tony Bragiole.

Q The same manner as he had before?

A Same manner.

Q Where did you see them meet?

A They either took a table off by the side or went into the bathroom or went off in pairs in front of the club to talk.

Q What was your personal financial position, Mr. Mengrone, about the beginning of December 1972?

A Bad.

Q What did you do as a result of that?

A I entered into a partnership agreement with Angelo Ricco and his partner at the time, Ricky Baronti, whereby they put $8,000 cash into the club. Angelo and I

get out of here.

Q Did he say what Jimmie got arrested for?

A He said he got arrested for possession of guns.

Q Who were these other two people in the kitchen at that time?

A One was my girl friend.

Q What were their names?

A Carol and Gina.

Q What was Mr. Ricco's tone of voice when he was speaking to you?

A Just excited. He wanted to get the coat and get the heck out of the place.

Q How manytimes did you see Angelo Ricco, Charles Indiviglia and Anthony Ricco at the Carpet in the next few weeks?

A I didn't.

Q In this period, did you learn that Rizzieri was arrestedfor narcotics and not for guns?

A I did, sir.

MR. JACOBS: Will the Government stipulate the arrest was for narcotics and not for guns?

MR. AMOROSA: Yes.

THE COURT: I will advise the jury that that arrest has nothing to do with this case. The sole reason for

bringing it in here was so that Mr. Mengrone could tell you what happened on that occasion, but it is not to be charged against Mr. Rizzieri.

Go ahead.

Q What did you do as the result of the fact that you learned that?

A I left a message at Renzo's Originals that the first chance they had, I wanted Angelo and Tony Bragiole to meet me at the Carpet.

Q Who did you leave the message with?

A Renzo Baronti, Ricky.

Q What happened as the result of the message you left?

A Angelo and Tony come down to the club. We go into the kitchen and have a meeting between the three of us.

Q When is this, do you know, Mr. Mengrone?

A Towards the latter part of March. A short time after the fact that Jimmie gets arrested. It is after that.

THE COURT: Who did you say came down to the club?

THE WITNESS: Tony Bragiole and Angelo Ricco.

Q What was said in the kitchen?

A I showed him a newspaper clipping.

Q Just tell us what was said.

A I confronted him. I said, "What is going down? You tell me that the guy got arrested for possession of a gun and I find out he is dealing narcotics out of the club,"and I was angry at the time based on the fact that the liquor license was at stake and I said, "If you are going to deal in narcotics, do it at Renzo's Originals, don't come to the Carpet," and they assured me they are not dealing in narcotics, that my fears are unfounded and just not to worry about nothing and relax, they would handle it, and that was the end of the conversation.

MR. GOLDBERGER: Can we have who is saying what in the conversation?

THE COURT: Can you separate it?

THE WITNESS: Angelo is telling me they are not dealing in narcotics and Tony tells me I shouldn't worry about anything, just relax.

Q Was anything said about your father in that conversation?

A I made mention of the fact that my father, you know, my father was a New York City policeman and if he ever found out that something like that was going on, he would wind up breaking my rear end.

Q After this conversation, did there come a time

whe you spoke with Olga?

A Yes.

Q When was that, Mr. Mengrone?

A Within two or three days of the meeting I had with Angelo and Tony.

Q Where did you speak to Olga?

A She had come to Empire Ford in Mount Vernon.

d 1A (continued on next page.)

/14/76
M 1b

1 rkmch Mengrone-direct

Q I am sorry.

A She had come up to Empire Ford and she was in my office.

Q Was she accompanied by anybody else?

A Johnny Anastasiata.

Q Did you have a conversation with her at that time?

A I did.

Q What was said?

MR. JACOBS: Objection; hearsay.

THE COURT: I think that is right, isn't it? I will sustain the objection.

MR. AMOROSA: Yes, sir, I think it is a proper objection. I wasn't thinking.

Q As a result of the conversation with Olga, what did you do?

A I again called Ricky down at Renzo's Originals and told him that I again had to see Angelo and Tony, would they come down to the club.

Q What happened as a result of that conversation?

A I met with Anthony Ricco and Angelo Ricco and told them --

Q Where did you meet with them?

A Outside the Magic Carpet.

THE COURT: On the street?

THE WITNESS: Yes, we were standing by my car.

Q What was said?

A I just delivered the message that Jimmy Rizzieri was going to stand up and do the time and that nobody had to worry, and despite everything they might have heard that he was going to take the fall himself and not implicate anybody.

Q You said you were delivering a message?

A That Olga had given to me to transmit to Tony.

MR.GOLDBERGER: I object. In effect he has gotten the hearsay into evidence. I ask it be stricken.

MR. AMOROSA: May I be heard?

THE COURT: The jury will disregard the statement of Olga's message.

MR. AMOROSA: But this was the conversation --

THE COURT: No. It is all right for Mr. Mengrone to say what he told Mr. Ricco and Mr. Bragiole; if you told them that that was the message, that is one thing. I am telling the jury that they are not to conclude that that necessarily was.

Q Did you tell them the source of your knowledge with respect to this subject matter?

A I did.

Q What did you say with respect to that subject?

A Excuse me?

Q What did you say to them with respect to the source of your knowledge?

A That the message came from Olga and she had gotten it from Jimmy.

Q What period are we in now, Mr. Mengrone?

A We should be coming into April sometime.

Q What happened at the Magic Carpet after this?

A Angelo comes back in --

THE COURT: We can't hear you.

A Angelo, Tony, everybody starts to come back in. Business dropped off; then everybody came back in the fold.

Q Did you owe any money in May of 1973?

A Yes.

Q How much money did you owe?

A 20, 25 thousand dollars.

Q Who did you owe it to?

A Various loan sharks.

Q What did you do as a result of these debts?

A I set up a meeting between myself, Angelo and Tony Braglole, and offered them the club for $3,000. Tony and Angelo agreed to it. He sends Angelo into the

club. Angelo comes back out and gives me $3,000 and the place is now theirs. I would stay on the paper but they can control it or do whatever they want with it.

MR. GOLDBERGER: What was the amount mentioned, your Honor?

THE WITNESS: $3,000.

Q What did you do with the $3,000, Mr. Mengrone?

A I paid off some of the shylocks and some of the bills I owed, just trying to stay afloat.

Q Was this a loan or a gift?

A It was a loan to be paid back at the rate of $100 a week just for 30 weeks.

Q No interest?

A No, no vig, nothing.

Q After this, did you continue to be the owner on paper of the Magic Carpet?

A I did.

THE COURT: I am not clear.

Did you actually sell your interest in the club to them or not?

THE WITNESS: Yes.

THE COURT: Then it wasn't a loan, was it?

THE WITNESS: The arrangements were --

THE COURT: They would give it to you but you had

to pay it back?

Q Did you need that $3,000 at that time?

A Yes, desperately.

Q After this loan to you, Mr. Mengrone, what was your financial situation?

A Desperate. Very, very poor.

Q Where were you living at the time?

A 630 Grammerton Avenue in Mt. Vernon.

Q What did you do as a result of this?

A I had another meeting with Anthony Bragiole and Angelo Ricco at which time --

THE COURT: When was this?

THE WITNESS: The beginning of June.

A (Continuing) I just laid the cards on the table and told them that I can't even pay them back the $100 a week that I owed them on the $3,000 and the only chance I have of bailing out is that if they let me work in the narcotic business.

Tony Bragiole agrees to allow me to do so and he will tell me how to handle it, and I should reach out for customers, and if I get customers,they will be able to handle heroin, cocaine, quinine, mannite. It was up to me to get customers.

MR. GOLDBERGER: Who said this? He talks about

"we," "they."

THE COURT: Would you please specify?

THE WITNESS: Tony tells me, Anthony Ricco.

Q Did Angelo Ricco say anything?

THE COURT: He said that Anthony said that.

Ask him if Angelo said anything.

Q Did Angelo Ricco say anything?

A The only conversation between Angelo Ricco and myself was one in which he said, "How come you can deal in narcotics, but last month you carried on like a lunatic in the kitchen about it?"

And I said, "Now we have gotten to the point where I don't have any choice. If that is the only way I can bail out, I will sell narcotics."

Q After this arrangement, Mr. Mengrone, what did you do?

A I started to make contacts, people that I knew up at Empire Ford, people that I owed money to, and let it be known that I was in a position to supply narcotics if they had customers.

Q How long did this continue?

A Up until the date of my arrest, October of '73.

Q Who did you speak to in this period, or some of the people you spoke to in this period, with respect to

this subject matter?

THE COURT: Why do we care? Is that related to the charges against the defendants on trial?

MR. AMOROSA: Yes, it will be.

A During that period of time I spoke to Anthony Zinzi, Gary Pearson, Nick Visciglia. I spoke to James Venia. I spoke to Kenny O'Donnald, Frank Lucas, Gigi, a Spanish gentleman known to me as Eddie, and various people, a good, ten, twenty others.

Q The fellow Gigi you mentioned, is that his real name?

A That is the only name I knew him by. He owned a night club, Gigi.

Q Where was that nightclub situated?

A In the Bronx.

Q When did you talk to Gary Pearson?

A In June of 1973.

Q Where did you talk to him?

A At Empire Ford.

Q Will you tell us in your own words what happened and what the conversation was.

A Pearson was brought to me by Anthony Zinzi and informed me if I needed anything in the way of pure heroin or pure cocaine, that Pearson could supply it at the right

price.

Q Who informed you of that? Try, if you can, Mr. Mengrone, to tell us who was speaking.

A Zinzi introduced Pearson. Pearson picks up the conversation with the fact that he is able to supply pure cocaine or pure heroin or whatever I would need, that I should get in touch with my people and maybe we could do something together,and I tell him I would get in touch with them and tell him I will see him the next day up at Empire Ford.

Q You will see who the next day?

A Pearson. Zinzi didn't enter into the picture then.

Q Did you speak to Visciglia on this day?

A He comes up in the afternoon and tells me he had a customer, a colored gentleman that was interested in purchasing a kilo of cocaine, and that if I could set the arrangement up so they could get a sample so they could taste it, we could possibly work an arrangement out.

I told Visciglia the same thing, I will get to my people tonight, come up and see me tomorrow up at Empire Ford.

Q What did you do that evening, Mr. Mengrone?

A I met with Anthony Ricco and explained to him

the way the deal had been explained to me; in other words, that Pearson had come in in the morning and was looking to sell pure cocaine, but in the meantime Visciglia had shown up that afternoon and was looking to buy a kilo.

Q Of pure --

A He wasn't interested, as long as it took a 2 or a 3. He didn't specify pure. Pearson is guaranteeing his is pure, and Visciglia is looking to buy something.

I spoke to Anthony Ricco and arrangements are made whereby we would sell a kilo of adulterated cocaine to Visciglia. With the proceeds from that, we would buy the other kilo from Pearson, hit it, and wind up with 2 kilos instead of one.

Q When you say "hit it," you mean cut it?

A Dilute it with quinine or what have you.

Q What is the next thing that happened in connection with this proposed transaction?

A The next day, as per the arrangement, Pearson shows up and I tell him that the deal is all set on our end, that if he comes by around 8:00, 8:30 that evening, that we would have the money and purchase the goods from him.

Q Where is this conversation?

A Again at my office at Empire Ford.

Q You just said you told Pearson if he comes by. Comes by where?

A My office at Empire Ford.

The arrangements are set from the day before that Pearson is to come back to Empire Ford and meets me in my office. He comes by the office and I tell him we can do the deal that night. He is to come by the Magic Carpet between 8:00 and 8:30 and I would be ready to do business with him.

Q Would you continue with respect to the next thing that happened in connection with the transaction?

A That afternoon, Visciglia shows up, wants to know how I made out. I said, "If you come by the Magic Carpet around 6:00, 6:30, I will have a sample. You can test it. If you like it, we can deliver the kilo of cocaine hand to hand," and he agrees to doso, and it's set up for that evening.

Q Would you continue? What is the next thing that happens?

A That evening I go down to the Magic Carpet. I meet with Anthony Ricco.

THE COURT: What time?

THE WITNESS: 6:30, 7:00 o'clock. Around 6:30, because that is the time I leave.

11 rkmch

A (Continuing) I meet with Anthony Ricco and tell him the deal -- in fact, both deals are set, that I would make the first transaction and with that money we could do the second one.

He says, "Fine." He said, "Go over to Angelo's house and he will give you a sample of the cocaine."

I leave the Carpet and I take Visciglia with me and the colored fellow. We drive over to Angelo's place on Hollywood. I park the car, go upstairs. I tell him Tony sent me over to get the sample. He says, "I know."

I wait a second. I am in the kitchen and he goes into the bedroom and comes out --

THE COURT: Where is this?

THE WITNESS: Hollywood Avenue. Angelo Ricco's apartment.

A (Continuing) He takes out the bag and scoops out a quantity of cocaine and wraps it up for me in aluminum foil and tells me he will meet me back in the club with the remainder of the package.

Q You said he had a bag. What was in the bag?

A A white substance which I later learned to be cocaine.

Q How big was the bag?

A 6 inches, 6 or 8 inches, just a couple of pounds. A big plastic bag with a tie on it.

Q What did he take from the bag?

A He scooped out a spoonful of the cocaine, then packaged it in aluminum foil.

(Continued on next page)

Q Then you left?

A I left.

Q Was this in the vicinity of St. Raymond's Cemetery?

A I'm pretty sure that house was near St. Raymond's, near Bruckner Boulevard.

MR. GOLDBERGER: I would ask Mr. Amorosa not to lead the witness. We are involved --

THE COURT: He has specified where it was, and either it was or it wasn't there.

Q Tell us, Mr. Mengrone, in your own words again, what happened in connection with this transaction.

A On the way back to the Magic Carpet, myself, Visciglia and the colored gentleman go back to the Magic Carpet. While we are driving over, they test out the cocaine and I park in front of the Carpet. Two of us, Visciglia and myself, go into the Magic Carpet. I go into the kitchen and ask him what he thought about the sample.

He said it was fine, that he was going to go now to get the money, and he would meet me back here, and I said, "No problems. I'll be waiting outside for you."

As he's leaving, Pearson shows up in the company of Johnny DiSalvo. They are waiting for me to get the money

Q Tell us, Mr. Mengrone, what happened while you were outside?

MR. AMOROSA: Strike that.

Q What were you just saying?

A Angelo shows up. He's got the rest of the package, he's ready to go. I'm still waiting for Nicky Visciglia to come back with the money, the $20,000.

Q Where are you waiting?

A Sitting in my car in front of the Magic Carpet.

At that time Johnny DiSalvo comes out of the Carpet and wants to know what's going on. I say, "In what respect?"

He says, "You know, if this deal don't go down, I'll break your skull for you, because I got other things to do."

I said to him, "I'm waiting for the guy to get here with the money and then we'll complete your transaction." I says, "If you have any problems with it, go inside, check with Angelo and Tony, because," I said, "I'm not sitting out here because I got nothing better to do with my time."

He says, "I'll go check."

He goes into the club. Maybe ten, fifteen minutes later, he and Pearson both come out. I says, "Did everything check out?" Pearson says, "You weren't lying. You told

the truth. We will see you later on."

They both leave. Visciglia never shows up, so nothing happens; the deal doesn't go through.

Q Subsequent to that did you come to learn what happened?

A Yes, sir.

Q Tell us in your own words what happened in connection with that transaction.

MR. GOLDBERGER: I object unless he gives us the source.

Q Did somebody tell you something about what the problem was that evening?

THE COURT: Problem for whom?

Q The problem, why the transaction didn't go down as planned.

THE COURT: You mean why Visciglia didn't come back?

MR.AMOROSA: Yes.

THE COURT: Did somebody tell you why Visciglia didn't come back?

THE WITNESS: Yes.

THE COURT: Who told you?

THE WITNESS: Pearson.

THE COURT: What did he say?

THE WITNESS: Pearson explains to me that Visciglia was to be his source of the cocaine. So, in reality, Tony, Angelo and myself were going to sell Visciglia cocaine which Visciglia was going to sell to Pearson and Pearson was going to sell it back to us, and it becamse known as a circle jerk.

Q Did there come a time, Mr. Mengrone, when you met a person you knew as James Venia?

A Yes.

THE COURT: How do you spell that?

THE WITNESS: V-e-n-i-a.

Q When was that?

A Early part of July, 1973.

Q Where did you meet this fellow Venia?

A I had contact with him in the past. He was a shylock that I owed $5,000 to.

Q The question is where did you meet Venia?

A I met Venia at Empire Ford. He came in and I explained to him the situation I was in and asked him if he could reach out for some customers that I was able to do, you know, do a narcotics transaction, if he could swing something.

He told me he would reach out and get back to me.

Q Did you owe him any money at the time?

A $5,000.

Q Did you see him thereafter?

A I did, sir.

Q When?

A About four, five days later, he returned to the Empire Ford.

Q Did you have a conversation?

A I did.

Q Was anybody else present?

A Just himself and I.

Q What was said?

A He had reached out and came up with a fellow that had 6 kilos of heroin. It was supposed to be part of a Detroit operation. They needed to sell the stuff immediately to pay some attorneys' fees or something.

And we -- I was to get in touch with my people, tell them that the stuff was available to us for $40,000 a ki, and there were 6 kis involved.

I said to him, "I can't do nothing until I talk to my people," so I tell him to come on back tomorrow at the same time, meet me at Empire Ford.

That evening I go down to the Carpet, I meet with Angelo and Tony and explain to them that Jimmy V. had come up and had 6 kis of heroin for sale at $40,000 apiece

and asked them whether we could do anything with it.

Anthony Bragiole tells me we can do something but it's got to be for $35,000, and explains to me that what we are going to do is buy the first ki, test it for purity; if it's good, then we will buy the remaining 5, that I should relay that message to Jimmy V. If he goes along with the deal, we carry it along from there.

Q This Jimmy V. is James Venia?

A Yes.

Q What else was said, if anything?

A Excuse me?

Q What else was said in that conversation, if anything?

A Nothing was said at that time.

Q What was the next thing that happened in connection with this transaction?

A I met with Venia the following day and tell him that the deal is all set, but that it had to be for $35,000, we were going to take the first ki and test it.

He says okay, "I'll meet you tomorrow," meaning the next day, that I should go to my people, get the money and we'll get the ball rolling.

That evening I go to the Magic Carpet and I meet

with Tony Bragiole. I explain to him that I had gotten the guy down to $35,000, but the deal is ready to go whenever he is. He says, "Okay, go to Angelo's house, pick up the money."

He says, "Under no circumstances are you to front the money to Venia?"

Q What do you mean by that?

A I'm not to give up the money until I've got the heroin in my hands, that no matter what, the money stays with me until he hands me the heroin.

He says, "I'll call Angelo and tell him you are on the way over."

I leave the Carpet and I drive over to Angelo's house on Hollywood. I go upstairs, you know, tell him, "Did Tony call?" He says, "Yeah. Hold on a second."

We go into the bedroom. He takes a shopping bag out of the closet and from the shopping bag he took out $35,000. If I recall correctly, it was seven packages of 5,000 apiece. He says --

Q Was there anything else in the shopping bag after he took that out?

A Just money. A shopping bag of money.

THE COURT: Who did this?

THE WITNESS: Angelo.

Q How big was the shopping bag?

A A normal A & P-type shopping bag.

Q What happened next?

A He repeated the instructions that I was not under any circumstances to give up the money until I had the heroin in my hands.

I said, "No problems. I can ahndle it. I'll see the guy. Tomorrow we will go."

I leave Angelo's house. He gave me the money, put it in a bag. I put it under my shirt and I leave. I take it home and I leave it there until the next day.

Q What did you do the next day?

A Jimmy V. comes up to the Empire Ford, comes into my office. I explain to him that I'm ready to go whenever he is, that I have the money in the drawer, and I show him.

He says he's got to have the money up front in order to get the first ki. He says, "You know me a long time. I would never beat you or anything else. Don't worry about it." He talks me into giving up the money, so I give him the $35,000.

Q You gave him the whole $35,000?

A Actually I gave him 33; I took 2 for myself.

Q You stold the 2,000?

A Yes, sir.

Q What else happened?

A He tells me I should wait there and he'd come back with the heroin.

I wait until 5:00 o'clock; nothing happens.

I get in my car and I drive down to his place of business on Boston Post Road.

Q Whose place of business?

A James Venia.

Q What kind of institution was that?

A A car wash that he used to operate out of. He had an office there.

Q Did you see him there?

A Yes, sir.

Q What was the conversation?

A I inquired as to where the money or the heroin was, one or the other. He told me that he had given it to his contact, Blackie, and was waiting for the guy to come back.

And I said, "He should have been back already."

He says, "Yes, but he must have got tied up in traffic or something."

And I said, "Okay, I'm going to go down to the Carpet. I'll wait there. As soon as you get the stuff, call me and I'll pick it up."

I go to the Magic Carpet. I meet with Angelo and Tony and explain to them that I had given up the money, I didn't have the goods yet.

Q Where was this meeting?

A In the kitchen.

And the two of them proceeded to explain my stupidity to me, that I had no business giving up the money.

Q What was the tone of their voices?

A They were violent, mad, because I lost their money.

I tell them, "Look, the guy Jimmy V. is a good person. He'll stand up. There is no problem. The money is good."

Tony Bragiole tells me to get him on the phone and tell him he wants to see him down at the Magic Carpet.

I call him at the house and he says there is no way he was coming down to the Carpet, that he would see me the following day at the car wash place.

Q This is Venia you called?

A James Vena tells me he won't come to the Carpet but he'll meet me at the car wash.

I meet him at the car wash the next day, at which time he tells me he has no idea what happened to Blackie,

he has no idea what happened to the $33,000, but that he'll give me Blackie's name and address, where the wife and kids and himself are residing, and the kind of car he was driving, and that I should give that information to my people, and they could, you know, try to track him down.

I take the information. I go down to the Magic Carpet. I meet with Angelo and Tony and explain to them that the money is gone, the guy hasn't shown up, and here's the address where his wife and kids are living.

At that time Angelo -- excuse me, Anthony Ricco tells me that I should go take a look at the neighborhood and see if I can spot the car or maybe the guy himself floating around.

I drive over there and I park the car and I'm waiting around to see --

THE COURT: Where is the neighborhood?

THE WITNESS: Around Allerton Avenue, Colden Avenue in the Bronx, that area.

Q I didn't hear that.

A Allerton Avenue in the Bronx, Colden Avenue, the same section.

While I'm sitting there waiting, Angelo pulls up behind me and comes in the block, you know, and asks me

if anything happened yet, and I said, "No, the guy hasn't shown up. I haven't seen any movement in and out of the building."

He says, "Okay, come on back to the club. Tony wants to see you anyway."

So he follows me back to the Magic Carpet. And in the conversation which follows in the kitchen, he tells me he doesn't understand me --

THE COURT: Who tells you?

THE WITNESS: Anthony Ricco doesn't understand me, how I can give up the $35,000, but he says that I shouldn't worry about it as long as we have got the name and address and know the guy has got kids, "We will snatch one of his kids and we'll see how quick the guy comes back with the money."

MR. GOLDBERGER: I object, Judge.

THE COURT: Overruled.

A (Continuing) I said to them, "If you are going to get into something like that, you got to get into it on your own. I don't want no part of it." I said, "It's bad enough I lost you money, but if you are going to kidnap somebody, forget the number."

Q Who else was present?

A Just myself, Angelo and Tony. We were in the

kitchen.

It's just at that time theysaid, "Look, we will handle it. Just drop it."

Then we leave it off.

Q Did there come a time, Mr. Mengrone, when you met with Frank Lucas and talked with him with respect to a great deal of narcotics?

A Yes, sir.

Q When was that?

A Around September of 1973.

Q Where?

A Frank and I met on Baychester Avenue in the Bronx, right off 233rd Street.

Q I can't hear you, Mr. Mengrone.

A Frank met with me on 233rd Street right off Baychester Avenue in the Bronx.

Q Was anybody else prhsent?

A His partner, Chuck Morris.

Q What was said in substance?

A In substance, they got into my car, Frank got in the front and Morris was in the back, and he told me that he was ready, willing and able to deal for large quantities of heroin if I was able to supply it.

I said, "You know, it takes a lot of money."

He says, "Well, come with me."

I got out of the car. We walk over to his; he opens up the trunk of the car and displays the attache case which, when he opens it, is just, you know, rows of money.

I said, "What do you have?"

He said, "I got $350,000 and I can get whatever else I need. You tell your people if they want to deal I got the money."

I said, "I'll get back to you. Let me talk to my people."

Q What was the next thing you did in connection with that conversation you had with Frank Lucas?

A I met with Anthony Ricco.

Q Where?

A At the Magic Carpet.

Q Did you have a conversation?

A Yes, sir.

Q What was said?

A I said that I had Lucas on the line. He had $350,00 in his posses ion right now and he was ready to do heroin, and if we had it we could do something.

Q What did he say?

A He said we were dry at the time, that they were

waiting for a shipment to come in, but I should keep him on the line, just tell him to bear with us, that the stuff will be here.

And that's the way I leave off with him.

Q Was anything else said at that time?

A He offers me a sample of cocaine. He says to get in touch with Lucas, maybe he wants to do some cocaine.

I deliver the sample of cocaine to Lucas. He is willing to do a deal in cocaine. He is willing to do a couple of kis of cocaine, as he puts it, at least to keep his people busy on the streets while he is waiting for the heroin to come in.

(Continued on next page)

Q As who put it?

A Lucas. The only stipulation in the deal was that he was to deliver it to the gas station in Harlem where he and I had been using that spot as a meeting place, and he was going to pay 21,000 a ki for it. When I got back to Tony,, I said he was ready to go, that I had to deliver the two kis to Harlem, Bragiole said there is no way. Tell Lucas forget about it. If he wants to do it he will do it our way, otherwise we don't do it.

So the deal never comes off based on I'd have to make the delivery personally into Harlem. They didn't want to do it.

Q Did anything else happen in connection with the proposed heroin transaction?

A There comes a time where I meet with Tony Bragiole and he -- I speak to him, I am still looking for the hero-n, because I still got Lucas on the line, and he tells me that I should meet him down at the club, that the shipment had come in, he will give me a sample to give to Lucas, it will take a seven or an eight.

In other words, you could hit it seven or eight times. It was -- it had already been hit, it wasn't pure heroin, but it was good enough for what Lucas wanted.

He said I should meet him in front of the Magic

Carpet around 11:00 o'clock.

Q What kind of heroin did Lucas want based on your conversations with Lucas?

A My original conversations with Lucas was he just wanted a good quality heroin. Okay, to spend, say, $35,000 a ki. Then we get to the point where Lucas feels for $35,000 he should get pure. And I wasn't able to supply the pure.

Q You said you had a conversation in which you were supposed to meet Tony Bragiole at the club.

A Yes, sir.

Q For what purpose?

A To pick up the sample of heroin to give to Lucas.

Q When is this, Mr. Mengrone?

A Early part of October, late part of September, somewhere in that area.

Q Tell us in your own words what happened.

A I go down and I -- I'm parked in front of the Magic Carpet and I'm there from 10:0, quarter of 11:00 on, and Tony Bragiole hasn't shown up yet. I am waiting for the sample.

Q Where are you waiting?

A Sitting in the car. I have already looked inside.

He is not in the club, so I sit outside in the car waiting. While I am waiting for Tony, Charlie Poops comes out and comes over to the car and asks me how I am doing, and I said fine. "I'm waiting for Tony, he got something, you know, I'm in the middle of a big deal, but I hope he shows up tonight, I need the sample."

So as he is sitting with me, he says,"I know he will be here because I already got something on the line for a quarter of a ki of heroin. I 've already got the money for it, I've got the guy waiting now, so if Tony says he'll be here, he'll be here, don't worry about it."

Fine. At that time Charlie gets out of the car. He goes into the club. I am still sitting another 15 minutes --

Q Charlie Indiviglia?

A Yes. Charlie Poops. He goes back into the Carpet. A kid Sally comes out, a nephew of Bragiole, he comes over to the car,"what are you doing? " Same type of conversation. "Nothing, I 'm waiting for your uncle."

Q Tell us what was said.

A I says, "I'm waiting for Tony, does he think he is going to show up?"

Sally says he better show up. "I've got two guys waiting, I've got the money, they are -- the two guys

are waiting for an eighth of heroin. I says, 'I will wait for him." Sally says, "He will be here, stay there." I stay there and finally, twenty minutes later Tony pulls up, parks across the street, he comes across, gets into my car. He asks me how I am doing. I said, "I'm a little nervous because Lucas is waiting for the sample."

"Give him this, it will take a seven or an eight." And he hands me the sample of heroin wrapped up in the aluminum foil.

He says,"Tell Lucas if he likes it he can handle the negotiations directly with Bragiola."

Q I'm sorry, would you repeat that?

A "If Lucas likes the quantity or the quality, rather, of the heroin, he can handle negotiations directly with Tony."

At that time Charlie comes out of the club and says, "You know, I'm over here." So Tony says, "Okay, let me run because I got Charlie there." He and Charlie go back into the CArpet. I take my sample and go off to do what I have to do with it.

Q What did you do with the sample?

A I met with Frank Lucas, his partner, a couple of days later, Chuck Morris.

Q Where?

A Up at Buchieri's Motors. I am no longer at Empire Ford, I am at a Chrysler dealership in Mt.Vernon. I left a message for Frank Lucas to me at Buchieri Motors and I would give a sample. Morris comes up, we go to lunch. During lunch I give him the sample. He excuses himself, he goes and makes a phone call, comes back and says "I just spoke to Frank, I am going to take him the sample, if it is what you say it is, then we got curselves a deal. I will get back to you."

And that was the last I heard of him till about three or four days later where Lucas comes up to see me again and tells me that for $35,000 a ki he wants to purchase pure heroin.

I saidI will go back to my people and ask them what they can do. I go back that night. I speak to Tony Bragiole and tell him that Lucas wants pure.

He asks me if -- he asks me if he must have fallen on his head, he won't get pure for $35,000,"if that is the case tell him pass, we can't do the deal, and we drop it."

YOu said you knew Albert Rossi?

A Yes, sir.

Q Did there come a time when you had a deal involving Albert Rossi with Frank Lucas?

A Yes, sir.

Q Was Frank Lucas robbed of $30,000 in that deal by Rossi?

A He was, sir.

Q Who did Lucas hold responsible?

A Me.

Q When was this, approximately, Mr. Mengrone?

A In September of 1973.

Q Let's make it clear that this had nothing to do with any of these defendants on trial, is that correct?

A Nothing to do with anybody here, no, sir.

Q Nor did it have anything to do, that is, your negotiations with Lucas and with Rossi stealing the 30,000, with Anthony Ricco?

A Nothing to do with Anthony either.

Q As a result of the trouble that you were in with Frank Lucas -- strike that.

You got in trouble with Frank Lucas, didn't you?

A Yes.

Q He held you responsible andyou got in trouble?

A Yes.

Q As a result of the trouble that you got in with Frank Lucas what did you do?

MR. JACOBS: Objection, your Honor, relevancy.

MR. AMOROSA: It is indeed relevant.

THE COURT: It is hard for me to tell at this point. Go ahead. I will strike it if it isn't.

Q What did you do as the result of the trouble you were in?

A I went to the MagicCarpet and I asked Anthony and Angelo to come on outside for a minute, that I had a problem.

We go outside and are sitting by my car and I explain to them that Lucas had just been beat for the $30,000 by Albert and now Lucas is holding me responsible for the 30,000.

Angelo says, "What the hell are you doing business with that psycho?" Anthony --

Q Meaning Albert or Lucas?

A Albert was always referred to as either Crazy Al or the Psycho, just that was his name. And Anthony says to me, "I must have told you twenty times, no matter what you do, don't go near Albert. He's a head case. He is only going to cause you a problem. Angelo tell me that even though thiskid moved a ton of goods for us, he was always a problem, he was a grief from the first day that we did business with him."

I said I was in a situation where I had to do

something and Albert was able to provide the merchandise, at least I thought he was at the time. And whether it was Angelo or Albert, I don't recall specific at the time, it was just the fact that mention was made of the fact that he still owed them sixteen or seventeen thousand dollars from when he was doing business with them.

So what they will do now is kill two birds with one stone, they will try to rectify --

MR. GOLDBERGER: I object. Is that what they said?

THE COURT: Who said this?

THE WITNESS: Angelo -- excuse me, Anthony makes the statement that "We will kill the two birds with one stone, we will try to get your money back from Lucas and for Lucas, and we will try to get our own money back that Albert owes us."

He asks me where Albert was now. And I said I just passed the mother's house on Narragansett, and the car is parked there.

He says,"Okay, stay here,Angelo and I are going to take a ride."

They leave, they come back about 15 minutes later. I am still sitting outside in my car, they tell me he had gone by Albert's house, he wasn't there, the car

was locked up, but I should get the address where he is living or at least try to track him down and they will go on from there.

Q Did there come a time, Mr. Mengrone, when you met a man you knew as Gigi?

A Yes, sir.

Q When was that?

A In September of '73.

Q This is the same Gigi you mentioned before who owned a bar?

A The one who owns Mr.Gigi Lounge, right.

Q Did you meet him in October of '73?

A Yes, sir.

Q Did you meet him prior?

A Yes. I met him again in October.

Q Where did you meet him?

A Originally I had met him up at Buchieri Motors, he was brought to me by Kenny O'Donnald.

Q Where did you meet him in October?

A At the MagicCarpet Lounge.

Q When is this in October, Mr. Mengrone?

A Second, third week, somewhere inthat area, sir. It has got to be the early part of October, in that area.

Q Who else was present during this meeting?

A Myself, Kenny O'Donnald and Gigi, Angelo is at the bar, he had nothing to do with the conversation.

Q What was said?

A I told him that we could supply --

THE COURT: Told who?

THE WITNESS: I told Gigi that we were able to supply him cocaine to him at 20,000, $19,000 a ki, whatever, you know, whatever the cost is, what he would have to pay for it. He wanted a sample. I told him that I would get it for him that we could do business.

Q YOu had previous conversations with O'Donnald in respect to Gigi?

A Yes, sir.

Q And had you told O'Donnald to see if Gigi --

MR. GOLDBERGER: I object.

THE COURT: Yes.

Q What did you tell O'Donnald with respect to Gigi which resulted in the meeting?

A I told O'Donnald simply to tell Gigi that I would get a sample, he could test the sample out, if it tested out good, we would make the transaction the same night, it was just a matter of me getting him the sample to taste -- test, actually.

Q Is a fellow by the name of Charles involved in

this?

A Charles is a fellow who originally introduces Kenny to Gigi and then Kenny brings Gigi to me as the source.

Q This is not Charles Indiviglia?

A No, this is a separate entity altogether.

Q After this conversation that you had with Gigi and O'Donnald, what do you do next in connection with this particular transaction?

A With regards to that particular transaction, I am supposed to pick up a sample of cocaine from Tony Bragiole.

Q Did you have a conversation prior to that with Tony Bragiole with respect to it?

A Yes,sir.

Q Where was that conversation?

A At the Carpet.

Q What is said in that conversation?

A That he would bring me a sample of cocaine and that I should give it to the gentleman to test.

Q Is anybody else present during that conversation?

A No, sir, just myself and Tony.

Q Were you supposed to pick the cocaine up somewhere?

A I was supposed to pick it up at the Magic CArpet that weekend. This was going on during the week.

bsb

thereabouts?

A Yes, it is 1:30 in the afternoon.

Q Have you looked at 17F and compared 17F with the tape?

A I have, sir.

Q Is it an accurate reflection in words of what you hear or heard when you listened to it?

A It is, sir.

Q On the tape?

A Yes.

Q Thank you.

MR. AMOROSA: At this time we offer this conversation and 17F as an aid to the jury.

THE COURT: All right.

(Tape played.)

Q This conversation was betweenyou and Anthony Ricco?

A Yes, sir.

Q Toward the end of the conversation, Mr. Mengrone, was something mentioned about a meat shop?

A Yes,sir.

Q Who were you and Ricco referring to at that time in the conversation?

A We were referring to Albert Rossi and the fact that he used to beat money to open up a meat market.

Q Were you still at this time attempting to get back the $30,000 that Rossi had ripped Lucas off for?

A Yes, sir.

Q With the assistance of Anthony Ricco?

A Yes,sir.

Q Tell us again who the final recipient of the three kilos was supposed to be in this transaction?

A Spanish guy known as Eddie.

Q YOu know now that he was a State undercover agent?

A I know now he was, sir, yes.

Q What was the next thing you did, Mr. Mengrone, in connection with this transaction, the three kilo transaction?

A I met Tony Bragiole at the Magic Carpet.

Q Was it that evening?

A The evening as per the conversation, I told him I'd see him that night. I met him around 11:30.

Q What day again, is this, Mr.M engrone?

THE COURT: 18th of October.

MR. AMOROSA: Thank you, Judge.

Q Where did you see him on the 18th of October in the evening?

A At the MagicCarpet.

Q Was anybody else present?

2 rkmch

I would like to have a voir dire of this witness out of the presence of the jury before I determine whether any of -- whether this is Mr. Rizzieri they are talking about. Then I would raise an objection.

MR. BRACKLEY: Whoever wants to cross-examine with respect to those pages, can we have those pages in evidence?

MR. GOLDBERGER: I don't understand that. I want the tape played. I want the jury to hear the words on the tape.

THE COURT: I know, but let's see whether there is any material that may be adverse to other defendants, and if there is,maybe that portion of the tape you won't need.

There is no point in making problems if we don't have to have them.

Phyllis, would you take the jury into the jury room for a recess?

MR. RICHMAN: Judge, let me make my objection for the record.

In the Bertolotti decision, a special segment of that decision set aside for the Mengrone tapes, the same types were played. In that the Court chided the U. S. Attorney's office for putting people together in that

case in which the tapes would not have any bearing, then making the jury sit for a length of time --

THE COURT: I know, but they are not doing that. They are playing two pages out of 27.

MR. RICHMAN: Whether two pages get played or the whole tape gets played, my client's name never comes up. The whole period of time doesn't concern Blase and the overall effect to him is just again nothing but prejudicial.

THE COURT: I don't think Bertolotti states that people can't be tried together or that evidence can't be presented against one defendant that may not apply to other defendants.

I will have to determine at the end of the Government's case whether it has been done to excess, which I don't think it has, and there are special matters pertaining to your client which I have stated before I recognized, and I will deal with that.

(In open court; jury not present.

THE COURT: Mr. Mengrone, before I rule on whether all of this tape is to be played or not, some counsel,at least one, wishes to ask you some questions about who are referred to in the conversation. There may be other questions also.

the one between you and Albert Rossi, Mr. Mengrone, who was the Tony referred to in the tape?

A Anthony Ricco.

Q Who was "Brage," referred to in the tape?

A Tony Bragiole.

Q Anthony Ricco?

A Yes, sir.

Q Who was Earl?

A The father of Ernest Coralluzzo.

Q Who was Ernie?

A Ernest Coralluzzo.

Q Who was Frank?

A Frank Lucas.

Q There were several references in the tape to "whack" or "whacked." What is the definition -- your definition at the tiem they were used?

A To shoot or to kill.

Q There was also a reference in the tape to "wise guy." What is a wise guy, Mr. Mengrone?

A A member of organized crime.

Q Would you describe the events leading up to the Lucas transaction through which Rossi ripped Lucas off for $30,000, just briefly, please?

A I had gone to Albert and -- in an attempt to

negotiate the purchase of narcotics. Albert said that he'd be able to handle it. Arrangements had been made for Albert to meet Frank Lucas, which he did.

We met with Lucas. Arrangements were made for a purchase of a large amount of narcotics.

THE COURT: By whom?

THE WITNESS: By Frank Lucas from Albert Rossi.

Upon receipt of the first $30,000 for the purchase of the heroin, Albert stole the money and the deal never transpired.

Q Who actually gave Rossi the physical possession of the 30,000?

A The meeting took place on Bruner Avenue in the Bronx, where Frank Lucas followed me. I parked my car and I got out to speak to Frank and his wife.

Frank handed me the bag with the $30,000. I walked over to the car and Igave it to Albert. I asked him to count it and make sure it was there. I went back to continue my conversation with Mr. Lucas.

Albert gets out and says, "It's all here. We are set." I said, "Okay, I'll meet you later on."

Q He took the money and never returned with the money nor with the goods?

A Correct, sir.

Q And that was the basis for this conversation?

A Yes, sir.

Q Lucas held you responsible for the $30,000?

A Yes.

Q Prior to the Lucas transaction, was Anthony Ricco informed about what you were doing with Lucas and Albert Rossi?

A Anthony Ricco was informed up to the point that I had a customer that wishes to purchase narcotics.

Mr. Ricco doesn't have heroin at the time. He says he's waiting for the shipment. I said, "Okay, I'll just tell him that we are waiting."

But rather than wait for the period of time for the heroin to come in, I turned to Albert Rossi to see if he can obtain it from a source that he may have.

Q You told Rossi in this conversation, where Rossi said that Bragiole wasn't involved over here, you stated, I believe, "He's always been involved over here."

What did you mean by that, Mr. Mengrone?

A The fact that anything I did in narcotics concerned Tony Bragiole on an overall scale -- scheme, based on the fact that I was doing business with him and that any money I would earn would go back to pay off what I had owed them,

the original money there.

Q This conversation occurred on September 13, 1973?

A Yes, sir.

Q Prior to this conversation, Mr. Mengrone, did you speak to Anthony Ricco with respect to Al Rossi, after the time that Rossi ripped off the money, up until the time of this conversation -- I believe yesterday you testified the one converssation. Did you have a series of conversations with Anthony Ricco?

A Yes, there were several conferences held.

Q Could you tell us, if you can recall, any one conversation? If you can't recall, tell us the substance of all the conversations.

A I can't recall any specific conversation. But the general context of all the conferences being held were that I should use any means whatsoever to get Albert down to the club, meaning the Magic Carpet, so that Tony could get his hands on him and straighten the matter out.

THE COURT: Straighten out the $30,000 matter?

THE WITNESS: Straighten out the Lucas thing, yes.

Q In this series of conversations, was Anthony Ricco the only person present?

A Yes.

dealing with him?

A In the beginning, yes, I did.

Q Did Albert Rossi have a nickname as far as you knew?

A He did.

Q What was the nickname?

A Crazy Al, the Psycho. You name it.

Q Mr. Mengrone, you said there came a time that you went to Angelo Ricco's home on Hollywood Avenue in the Bronx, is that right?

A Yes.

Q As a matter of fact you said you were there on more than one occasion?

A Yes.

Q Do you remember the apartment?

A Vaguely, yes, sir.

Q Were you there on more than two occasions?

A Two occasions.

Q The only two occasions you were there on was to pick up cocaine and pick up money, is that right?

A That is correct, sir.

Q When you come into the apartment, what is the first thing you see as youcome in?

A The steps.

A The Man of the Year?

Q For the Elks.

A I wasn't the Man of the Year award.

MR. GOLDBERGER: No other questions.

CROSS-EXAMINATION

BY MR. BRACKLEY:

Q You mentioned something about the circle jerk transaction.

A Yes.

Q And you used the name of Visciglia with respect to that.

A Yes.

Q That is not Indiviqlia?

A No, it's Nicholas Visciqlia.

Q With respect to the conversation that took place in your car with respect to Charles Indiviqlia, was anybody else present in the car?

A Just myself and Charlie.

Q I take it you never saw Mr. Indiviglia purchase any narcotics from Mr. Ricco?

A No, I never did.

Q Did you ever see Mr. Indiviglia give him any money?

A No.

Q You don't even know whether it happened or didn't happen?

A No, sir.

Q How do you fix the time of September 1973?

A That particular time?

Q Yes.

A The end of September because I had been waiting for the shipment to come in. I had approached Tony Bragiole prior and had been told that he is waiting for a large shipment of heroin, and during the interim of having discussions with Lucas and several other people, in terms of being able to move it when it gets here, I received word that it's there, I should be at the club to pick up the sample that I can bring to Lucas.

Q How did you receive word?

A I had spoken to Tony.

Q Where?

A At Reeves.

Q There was no telephone conversation with respect to that?

A No.

Q You can accept that your conversation with Rossi took place in September, about September 13th· is that correct?

A Albert's conversation, the one we were reading today?

Q Yes.

A Yes.

Q By that time your problems with Lucas are far from resolved?

A Correct.

Q You are not even meeting with Lucas at that time?

A I am still meeting with Lucas. He keeps showing up at Buchieri Motors.

Q Does there come a time when you give a statement to the Government, when you became an informant or begin to cooperate?

A Yes, sir.

Q When does that take place?

A The end of March, 1975.

Q Just prior to your entering the grand jury?

A Yes, sir.

Q And that would be after Albert Rossi had testified at the Coralluzzo trial?

A January was the Coralluzzo trial, yes.

Q You knew the Coralluzzo trial was going on?

A Yes.

Q You knew some of the people involved in that case?

A Very much so.

Q So you were interested in what was going on down there?

A Not whatsoever.

Q You never heard what Al Rossi was saying?

A I didn't hear of anything that went on at the trial itself.

Q And nobody told you about it?

A No.

Q When you sat down with the Government agents and they referred to Rossi, didn't they state that Rossi said this or Rossi said that?

A They did not.

Q In any event, you know your conversation with the Government took place after Rossi's testimony and just before you went in to the grand jury in April of 1975?

A If I testified at Coralluzzo's trial, I went to the grand jury in April. That is the first time.

Q Do you recall when you said Frank Lucas or something wanted a cocaine transaction to take place in Harlem and Tony Bragiole, or whatever they call him, is supposed to have said, "Don't go to Harlem"· do you remember that?

A I do.

Q That would have taken place before you are alleged to have received the so-called sample of heroin?

A That is before the heroin transaction.

Q Do you recall telling the Government that the conversation you had about not going to Harlem took place in October of 1973?

A It could have been the end of September -- let me put it this way: I begin working at Buchieri Motors the last week in September. Any conversation I have with Lucas are following that which would go into the early part of October.

Q When Tony Bragiole is supposed to have said, "Don't have the transaction in Harlem," that would have taken place in October?

A Somewhere around the beginning of October. I can't be specific.

Q That is before you are alleged to have had the conversation with Mr. Indiviglia in the automobile?

A To the best of my knowledge, yes.

Q What you are saying, any conversation you had with him in your automobile took place sometime past September and some time into October?

A Either at the end of September, the beginning of

October, somewhere in there.

Q I take it you do not know anything at all about any purchase of narcotics by Mr. Indiviqlia from Mr. Ricco in or about September of 1973; is that correct?

A The only thing I can testify to is the conversation --

Q The so-called conversation?

A Yes.

Q You told us about the various cocaine and heroin transactions for which you are not going to be prosecuted.

A I have.

Q In addition to that, did you have some sort of a marijuana transaction involving several hundred pounds of marijuana?

A Yes.

Q How many pounds was that, 600 pounds?

A Tops 200 pounds. 100 pounds.

Q Where were you keeping that?

A Originally it had been dropped off at my house by Albert Rossi.

Q Is this the house with the three children and the wife?

A They were away on vacation.

MR. BRACKLEY: No further questions.

South Dixie Highway in South Miami, Florida, would testify that in April of 1972, a person by the name of Carrado was registered in Room 11 of the Dadelin Inn, while an individual by the name of Rossi was registtered in Room 10 at the same time, and that Carrado made several long distance phone calls to New York in this period to his wife, among others."

The second stipulation is as follows:

"It is hereby stipulated between the Government and the defendant Freddie Blase, that the defendant Blase went to Florida without Rossi in April 1972 and stayed as Rossi's guest in Florida and returned to New York with Albert Rossi."

MR. RICHMAN: So stipulated, your Honor.

MR. AMOROSA: Your Honor, at this time we have one very brief witness and at that time we will close.

N I C H O L A S A L L E V A, called as a witness by the Government, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. AMOROSA:

Q Mr. Alleva, for whom do you work?

A United States Department of Justice, DEA.

Q What capacity?

A Special agent.

Q How long have you worked in that position?

A Approximately five years.

Q Where are you currently assigned?

A New York regional office.

Q In the course of your duties over the last five years, have you engaged in undercover work?

A Yes, extensively.

Q With respect to narcotics?

A That is correct.

Q During that period of time while you were engaged in undercover work, Mr. Alleva, have you heard the terms "boy" and "girl"?

A Yes, sir.

Q What do those terms mean in the narcotics underworld?

A The term "boy" refers to heroin and the term "girl" refers to cocaine.

Q Have you heard those terms on numerous occasions in that connection?

A Yes, I have.

MR. AMOROSA: Nothing further.

MR. GOLDBERGER: No questions.

THE COURT: You are excused.

(Witness excused.)

MR. AMOROSA: At this time the United States rests.

THE COURT: At this time I will have to take up certain matters of law with all the counsel, and I think it will take us so long there will be nothing further today.

You are excused at this time, to return on Monday morning at 10:00 o'clock, at which time you will continue with the trial.

Take good care of yourselves over the weekend and I will see you on Monday morning.

Pledase do not discuss the case, even now.

(Jury left the courtroom.)

MR.MITCHELL: Your Honor, before the motions, could I ask for coverage Monday morning. I will be in and out. Mr. Richman will cover me.

MR. RICHMAN: If I am here, your Honor.

THE COURT: You understand, of course I don't know, but it is possible summations may commence on Monday.

MR. MITCHELL: I will be right here in the building.

THE COURT: I just want to know whether Mr. Carrado is satisfied that you might miss part of the Government's summation.

MR. MITCHELL: I will be here for the summations.

rkb-5

THE COURT: I am a little confused.

MR. MITCHELL: Monday morning I understand there may be a defense put in.

THE COURT: Is there any reason why I can't ask counsel about that now?

MR. GOLDBERGER: About what, your Honor.

THE COURT: Whether you intend to put on defense witnesses?

MR. GOLDBERGER: Your Honor, there is the possibility that I may call one or two witnesses. I don't believe, unless Mr. Amorosa is very lengthy on cross-examination, I don't think the direct will take more than a half hour on one and on the other, ten minutes, five minutes, and I may not call any.

THE COURT: I understand. I am not requiring you to call any. I just want to know the longest amount of time we might have to take.

MR. BRACKLEY: Nothing, your Honor.

MR. JACOBS: Aside from putting some things in the record, your Honor, with regard to my client's incarceration and with regard to the McMillan statement, I will have nothing else.

MR. MERBERG: Your Honor, at this time I can't honestly advise the Court whether I will put in a defense.

THE COURT: If you do, what would be the longest?

MR. MERBERG: At the very outside, three hours total,and it wouldonly be a decision made after we have viewed the transcripts.

THE COURT: Does thatinclude your estimated cross-examination?

MR. MERBERG: The entire matter.

MR. MITCHELL: I will put nothing in.

MR. RICHMAN: I have not made my final decision. That depends upon my conversation with Mr. Blase. If we do go, it should take at least a half day to be quite frank with you. That is not anticipating the length of the cross-examination. I am talking about direct witnesses, character witnesses, possibly the defendant himself, then cross-examination by Mr. Amorosa.

MR. MERBERG: Perhaps for the record I should enlarge my time. If Mr. Richman has the same idea, perhaps it will be a half day.

THE COURT: Three hours is a half day.

Mr. Mitchell, all I am pointing out, with this many counsel indicating they may put on testimony, nobody indicated they certainly will.

MR. MITCHELL: The point is I will be in the building and I will check here at ten o'clock and I will know

rkb-7

It is all in the building.

MR. MERBERG: The other thing if I was to be second in line, should Mr.Goldberger put a defense on, I don't think at this point under any possible questioning of either side, there will be any reference to his client.

THE COURT: He is not worried about the testimony. I just wanted him to be sure that he knew he might miss Government summation.

MR. MITCHELL: I won't miss that, I will be here.

MR. BRACKLEY: Your Honor, if they come in here Monday and they don't want to put in a case, is Mr. Amorosa going to ask to go to Tuesday to start his summation?

THE COURT: I don't see how he can start it Monday if there is testimony.

I want Mr. Amorosa to be prepared to sum up on Monday morning in case there is no defense case, and I want all defense counsel to be prepared to sum up.

Mr. Goldberger?

MR. GOLDBERGER: At the end of the Government's case, the defendant Angelo Ricco moves to dismiss counts 1, 2, 4, 5, 7 and 11, on the ground that Government has not made out a prima facie case.

THE COURT: That motion is denied as to Mr.

rkb-8

Ricco.

MR. BLOSSNER: If your Honor please, the defendant Indiviglia so moves as to counts 1 and 2, in which Mr. Indiviglia is named. I specifically move the Government has not proved a prima facie case. I will also add at this time as to Count 1, the conspiracy count, in which Mr. Indiviglia is noted in Overt Act No. 21, which is allegedly based upon the grand jury testimony of Mr. Mengrone, that he spoke to Mr. Indiviglia and that Mr. Indiviglia said he was anticipating something happening.

However, nothing did happen with the view or nothing was ever said after that to Mr. Mengrone. I specifically move to dismiss that count both on the Government failing to prove a prima facie case, and if that count had been allowed to go to the jury --

THE COURT: Count or overt act?

MR. BLOSSNER: I am specifically talking about Count 1, the conspiracy noted by the overt act Number 21, specifically had that been allowed to go to a jury the Court would have directed a verdict in that that did not establish his guilt beyond a reasonable doubt, and in fact that count being adduced before the grand jury, inadvertently led the grand jury erroneously to indict the defendant for fraud.

3A

/76 a

THE COURT: I can't comment on the question of whether he was properly indicted without reviewing the grand jury testimony, and I told you all that I am not going to do that in any case without a presentation of your contentions in writing, together with such support as appropriate.

Insofar as Count 2 -- stay with Count 1 -- Count 1 is concerned, the count need not be dismissed even if Overt Act 21 were to be stricken from the indictment because, as you know, the overt act in question need not be committed by the particular defendant whose case the jury is considering so long as the jury finds that he was a member of the conspiracy, and that one of the defendants committed one of the overt acts.

However, it could be prejudicial to Mr. Indiviglia to leave No. 21 in if there is not prima facie evidence that he actually committed that overt act, and I will hear Mr. Amorosa in regard to what evidence the Government contends there is in the record with regard to Overt Act No. 21.

MR. AMOROSA: Yes, sir.

Regarding that overt act, we submit that Mengrone testified that sometime in about December, I believe he said late -- strike that -- September, early October, he was

sitting in a vehicle alone --

THE COURT: Can you find it, so we don't have to guess about it -- this was yesterday.

MR. BRACKLEY: Page 1282, Judge.

THE COURT: Will you look at it, Mr. Amorosa, and tell me if that is what you are talking about?

MR. AMOROSA: It begins on 1281, Judge, at Line -- the question is at Line 19.

THE COURT: Let me read it.

(Pause)

THE COURT: All right, Mr. Amorosa. Do you want to argue what the significance of that testimony is?

MR. AMOROSA: It goes to, I believe, Line 21 on Page 1283. Has your Honor read through there?

THE COURT: Not quite that far. I will finish it. All right. Now I have.

MR. AMOROSA: Mr. Indiviglia makes admissions to Mr. Mengrone that he is waiting to pick up a quantity of heroin. He leaves the vehicle. Subsequently, Anthony Ricco comes into the vehicle with Mengrone, has a conversation with Mengrone. At the conclusion of the conversation, Mr. Indiviglia is seen by Mengrone coming out of the Magic Carpet and Mr. Anthony Ricco states to Mengrone that he has Mr. Indiviglia waiting, he has to go over, and Mr. Mengrone

3 bsmch

sees Indiviglia and Ricco meet, I believe, and walk back into the Carpet.

Based on that, assuming that all we have to prove here is a prima facie case that the transaction occurred, we submit that that certainly is sufficient to prove that the transaction occurred.

That is all there is in the record with respect to it, but again, we submit it is sufficient to prove that the transaction did occur, in the light of --

THE COURT: We are now talking about Overt Act 21?

MR. AMOROSA: Yes. I believe the motion is to strike Overt Act 21.

THE COURT: That's what I have reduced it to, yes.

MR. AMOROSA: That's what it is in substance.

THE COURT: I agree that the testimony is sufficient to support the continued inclusion of Overt Act 21, and the motion is denied entirely as to the conspiracy count as to Mr. Indiviglia.

What about Count 2? Will you refresh my recollection on that as to what the testimony was?

MR. AMOROSA: Yes, sir.

The witness Rossi testified that in August of 1972, or thereabouts, he met with Angelo Ricco and Charles Indiviglia and Angelo Ricco and Charles Indiviglia at that

time gave him a kilo of cocaine which the witness Rossi tried to move and sell. He was unable to sell the whole of it and he did return it to these people.

THE COURT: I recall that.

The motion is denied as to Count 2 with respect to Mr. Indiviglia.

MR. BLOSSNER: If your Honor please, the defendant will reserve his right as to the grand jury testimony. I will have a letter delivered to you by tomorrow afternoon.

THE COURT: Mr. Jacobs.

MR. JACOBS: On behalf of defendant Rizzieri, I would move to dismiss Counts 1, 4 and 5, on the grounds that the Government has failed to prove a prima facie case.

I would especially call your Honor's attention to Count 4, which is the alleged transaction with Agent Ferrarone.

Agent Ferrarone testified that on November 22nd, this man, Petey the Weep, put a package in his car, that he identified Mr. Rizzieri as the driver of the car that Petey the Weep was in.

There is no testimony that Mr. Rizzieri had anything at all to do with the package other than the fact that he drove the car.

THE COURT: Was that in the Bronx?

rkb-1

United States of America

vs. 75 Cr. 411

Angelo Ricco, et al.

New York, New York
January 19, 1976 - 10:00 A.M.

(Trial resumed.)

(In the robing room.)

THE COURT: I haven't ruled on some of the motions. I have motions pending with regard to Carrado, Rizzieri and Blaze, as I recall it. Motions with regard to Carrado and Rizzieri for judgment of acquittal are denied and the motion of Blaze for judgment of acquittal is denied.

The motion with regard to the infirmity of the grand jury proceedings is deferred.

The motion for a severance, I am prepared to rule on favorably to Blase, because I do believe that the overlapping of events of the limited nature of his participation and so on is such that it could be considered prejudicial to have been tried with this group of defendants.

However, I say I am prepared to do that. I think you may wish, Mr. Richman, to consider the matter with Mr. Blase and determine whether he will really be better off to be tried by himself in a case in which there will be sharp and precide evidence against him, or to take his chances on this trial in which he might get lost in the shuffle.

That is entirely up to you.

MR. RICHMAN: I have discussed this matter with Mr. Blase.

THE COURT: I will say I would expect to go ahead promptly with a new trial against Mr. Blase if the Government would wish to do so. I assume it would only take a day or so. I guess the only witnesses you have are Rossi and McMillan, and even Mr. Richman's searching cross-examination of Mr. Rossi will not take that long because it is all out in the open.

MR. RICHMAN: May I speak with my client.

THE COURT: Yes.

MR. MERBERG: I have another question. I made a motion originally at the side bar with regard to the New Jersey transaction that allegedly indolved DiSalvo and at that time your Honor said"I will reserve my ruling until a later date."

6 rkmch

is inappropriate. I think this is a more accurate statement of the law.

Request No. 14 simply lists the statute.

Request No. 15 is granted.

16 is granted in substance, as is 17.

18, I will review the list of circumstantial evidence on Page 2 but, as I have reviewed it to date, I am satisfied it correctly states the law.

19 is approved in substance as correctly stating the law regarding aiding and abetting.

I have my own charge with regard to the Pinkerton aspect of the thing and will charge it.

MR. JACOBS: As far as the Pinkerton goes, the Government apparently charges Pinkerton on some counts and not on others. Is your Honor going to tell the jury as to what counts Pinkerton applies -- are they only referring to Count 4 with respect to the Riccos?

THE COURT: I am confused on that. If you limit it to Count 4, we should limit it to that. If you mean all counts --

MR. AMOROSA: We don't mean all counts, because I think it would create a problem for the jury, to tell the jury that Pinkerton applies to all counts, because it doesn't, and I think that is the problem the Court was

6 bsmch

Page 775 of Rossi's testimony, Line 11:

"Q When you spoke to the agents shortly after you began to cooperate, Mr. Rossi, did you tell them in general about Mr. Indiviglia's involvement?"

There is an objection which is overruled and the answer is:

"I did."

Again, ladies and gentlemen of the jury, the agents aren't expected to ask these people about what's happening. They are expected to get intelligence information to present to our office and we take it from there.

MR. BLOSSNER: Your Honor, I ask if that's read back that it all be read back. On 806 and 807 he again says he doesn't remember who he said that to, if anyone.

MR. AMOROSA: I didn't read to the jury, your Honor, who he said it to. I read to the jury whether he said it.

THE COURT: I am particularly confused --

MR. BLOSSNER: He says, "I don't think before 1975," on Page 807.

MR. AMOROSA: If the jury wants it read back they can have it read back. I wasn't reading who he was saying it to at the time. Certainly he can't recall who he's saying it to; he's meeting so many people, how is he

8 bsmch

of the jury, he could have called the agents in if he wanted to. He was challenging us, why don't you call agents? Why didn't the Government call agents in to corroborate Rossi? Rossi's testimony was he told them about Indiviglia's involvement back in 1974. We concede that he didn't tell them the specific details of Indiviglia's involvement, that is, when, where, how, with whom, et cetera. That is conceded.

I submit to you that is not expected, for an agent to ask Rossi such things, when, where, what, with whom, what time of day, what month, as if preparing an indictment. Agents don't do that. I think you can find that from the proof in this case.

THE COURT: You have about fifteen minutes, Mr. Amorosa.

MR. AMOROSA: It should be plenty of time, your Honor.

Mr. Goldberger made some references also, I believe, which are not supported by the record in this case. He said there were many other telephone conversations between him and Angelo Ricco during the period of the wire tapping. That was not Mengrone's testimony and it's at 1395 of the record with regard to that. Mengrone's testimony at 1395 was as follows, cross-examination:

he made these admissions because he had total immunity. He didn't have total immunity and he doesn't think so. He made these admissions because he wanted to come clean with the Government. He wanted to give the Government everything that he knew, members of the jury, so that he could tell the truth and get any favorable treatment he was entitled to.

There is no question he was looking for a quid pro quo here. There is no question about that. He wouldn't help us if there wasn't anything that he was hoping for. He was offered that he could plead to one count federally and face 15 years, rather than face many counts. He could plead up in the Bronx and face 15 years rather than be forced to plead to an A-1 felony and spend the rest of his life in jail.

If he was forced to do that do you think he would cooperate with us? Of course not. The fact that he is cooperating doesn't mean a fortiori that he would lie, because there was no reason to lie about his sources in this case, there was no reason to conceal his true sources.

There was a lot said about the money that has been given to Rossi and Pearson, and if any was given to Mengrone -- I don't beleive there was any proof of that with respect tc the record -- but of course Rossi and Mengrone are both on the Witness Protection Program and,

as such, they were getting money from the United States marshals at that time, and we submit, members of the jury, there is no question, we concede money was paid to these people. We say, members of the jury, that they couldn't have gotten the monye from their old associates any longer, somebody has to support these people while they are doing this work. We will make no bones about it. We will do it because we need the testimony because they are the people who know, and that's why we do it; otherwise we couldn't put these cases together.

I submit that every penny we spent on Rossi and on Pearson is worth it, just like --

MR. JACOBS: Your Honor --

THE COURT: I sustain the objection, Mr. Amorosa. The jury is not to be concerned whatsoever with your view about whether it's well spent or not, or anybody else's.

Let me make this statement:

I am highly distressed that in the course of summation both by the Government and defense counsel there has been a great deal of statement as to what the truth is and as to how good or bad this, that or the other is. I have advised the jury in the beginning of this case that it is the law that no matter what counsel says, and they are not supposed to say it, it is not binding on you, ladies and

bsb-4

and render a fair verdict. The facts in this case are overwhelming, the corroboration is overwhelming, Angelo Ricco's own voice, the voice of [illegible]cle on the tapes in this case.

There is Angelo Ricco in a picture with Albert Rossi.

That is all I have.

Thank you very much.

THE COURT: Thank you, Mr.Amorosa.

Ladies and gentlemen, in some ways I regret that it is so late that I can't charge you on the law at the present time, I told you I would not, in other words, I am glad, because you heard two full days of summations, and they have been pretty vigorous summations, and as I say, I believe on both sides they have occasion naturally overstepped the bounds as to what should have been said on summation.

I am glad you will have tonight to cool off and let the dust settle and forget everybody's simplicit statement that so and so is a liar and this, that and the other thing.

There will be time for you after I give you my instructions tomorrow to sit down and collectively determine what you think happened here and whether the Government

bsb-5

has proven its case beyond a reasonable doubt as to each of the defendants who are on trial here. I won't say anything more at this time except that I do want to advise the alternates that I will have to ask them to come in tomorrow to be here when I give the instructions in case any of the regular jurors should be indisposed, although everybody has been so faithful that I don't think that will happen. If it does not happen, in other words, if at the end of the instructions, all the jurors are on hand, then I will be able to, and be required, as a matter of fact, to excuse the alternates, and I know our young friend here wants to be able to be sure that he will be able to play Saturday night.

YOu are excused for now even though you have heard all the testimony, and have heard all the arguments of counsel, for which I am sure you are grateful -- I will leave that ambiguous remark stand -- and I caution you not to talk to anybody at home about the case. Tomorrow you will be free to sit down and say what you think, in fact, you will charged to sit down and say what you think. So you better get home before the snow stops.

Come in tomorrow at ten o'clock.

(Jury excused.)

MR. MERBERG: May we see the Court in the

CHARGE OF THE COURT

(Lasker, D.J.)

Ladies and gentlemen, now that you have heard the testimony and the arguments of counsel, the time has come to instruct you as to the law governing the case.

You have been chosen and sworn as jurors in this matter to try the issues presented by the allegations of the indictment, and on your determination of the facts, and I stress the words "your determination" to decide under the law as I shall instruct you whether the Government has proven any of the charges of the indictment against any of the defendants beyond a reasonable doubt.

I will discuss those charges with you in detail in a moment, but before that, I want to give you a few important preliminary and general instructions.

First, you are to perform your duties as jurors without bias or prejudice to or for anybody, whether the Government or any of the defendants. The law does not permit jurors, and you wouldn't want it to permit jurors to be governed either by sympathy or swayed by prejudice or public opinion. In that connection, I want to point out that although this case involves narcotics, the subject

matter of this case has nothing to do with your deliberations except that as one of the facts you must find as to the substantive counts that indeed, what it is alleged was possessed, was narcotics, but you do not find a man guilty, or not guilty because of the nature of the charge. You only find him guilty if the Government proves the element of the offense which I will specify for you hereafter.

Your personal attitudes on the subject on which I examined you at great length it seems to me when this jury was chosen, has nothing to do with the issue which you are asked to decide.

Second, we start with the proposition that we started with at the outset of the trial. That is, that the law presumes every defendant to be innocent against every charge that is made.

You will recall when you were selected I specifically asked each one of you if you could enter into the discharge of your duties presuming each defendant to be innocent unless proven guilty beyond a reasonable doubt after your own deliberations, and each of you gave me the answer "yes."

This presumption of innocence is sufficient to acquit any defendant unless and until you as jurors have

rkb-8

unanimously satisfied yourselves beyond a reasonable doubt of that particular defendant's guilt on that particular charge from all of the evidence which has been presented.

The burden or responsibility is on the Government to prove each defendant guilty beyond a reasonable doubt of every essential element of each crime charged, and I will advise you later in this charge just what those elements are.

Third, I want to remind you what I mentioned at the outset of the trial, that is, that the existence of the indictment does not constitute evidence against any defendant but it is merely a method of bringing a charge against them. The indictment in this case contains several counts, as you know. Each count contains a separate crime and each of the charges must be considered separately.

Equally important is the observation that the indictment names 12 defendants of whom only six are on trial. They are the persons whose guilt or innocence you must announce in your verdict.

In the determination of innocence or guilt, you must bear in mind that that determination is personal. The guilt or innocence of a defendant on trial before you must be separately determined with respect to him, solely on the evidence presented against him or the lack or

rkb-9

evidence.

The case of each defendant stands or falls upon the proof or lack of proof of the charge against that defendant and not against someone else.

Now, I have said and the lawyers have said many times throughout the case that the Government has assumed the burden of proving each defendant guilty beyond a reasonable doubt. Let me define that important term for you at the outset.

A reasonable doubt is not a vague, speculative or imaginative doubt. It is a doubt which, as the phrase suggets, is based upon reason and which comes either from the evidence or from the lack of evidence. It is a doubt which a reasonable man or woman might entertain. It is a doubt, and I think this is the best definition, which would cause reasonable men and prudent men and women like yourselves to hesitate to act in connection with matters of importance in your own private lives.

Let us say you have an important decision to make. How do you go about making that decision? You think about everything you know about it and you think about everything you would want to know and haven't been told and you say to yourselves, do I have enough information, do I have enough dependable information so I am ready to

rkb-10

act. If you say "I don't have enough," then you have a reasonable doubt. If you say "I do," then you may proceed. A mere suspicion can't justify conviction. Suspicion is no substitute for evidence, nor is it sufficient to convict if you find that the circumstances merely render the guilt of a defendant probable.

The law does not deal in probabilities.

In saying that the Government must prove its case beyond a reasonable doubt, if there is to be a conviction, I do not mean to say that the Government is required to prove guilt beyond all possible doubt. Indeed, in human affairs, it is hard to think of anything we can prove beyond all possible doubt with the exception of mathematical propositions, but the proof must be of such a convincing character that you would be willing to rely and act on it in the most important decisions of your own affairs.

Now, the evidence in this case, as I have told you a number of times, consists of the testimony of witnesses, the exhibits which have been received in evidence and facts which have been stipulated or agreed to by counsel. You have to decide the case based solely on the evidence but in your consideration of the evidence, you are not limited to the bald statement of the witnesses here or any witnesses

rkb-11

in any trial. By using the word "bold" I don't know to suggest anything about the character of the testimony, but I mean you are entitled to and you are obliged to think behind the mere words that were uttered. Indeed, ladies and gentlemen, in this case, there is no doubt and all counsel agree and so do I, that the outcome of this case depends almost exclusively on your determination of what witnesses you believe and the extent to which you believe them.

In deciding the many questions before you, it is your job to determine credibility of the witnesses who have testified here.

How do you go about that? Perhaps the best answer is to saythat you determine the truthfulness or accuracy or weight to be given to a witness' testimony in the same way you determine questions in your own personal affairs. We are all constantly called upon from day to day to determine how much confidence we place in the statements people make to us. The truthfulness or dependability of a witness as that of any person can be determined by his demeanor, his look, his relationship to the case and to the parties, the possibility of his being biased or partial or of his not being biased or partial; the stake he may have in the outcome of the case, the

rkb-12

reasonableness or unreasonableness of his statement. The strength or weakness of his recollection and the extent to which what he has said has either been corroborated or contradicted by testimony of other witnesses or by exhibits or stipulations.

Of course, the witness' testimony may be impeached by his own prior inconsistent statement unless there is some explanation for the inconsistency. In ordinary life when you need to determine the truthfulness of a person, you ask yourselves, don't you, as you did here, did he impress you, did his version seem straightforward and candid, did he seem to be trying to hide some of the facts, did he have any motive to testify falsely or no motive.

The ultimate question for you to determine and to decide on in passing upon the credibility of a witness is whether you believe he told the truth. It is for jurors alone to determine the weight to be given to the testimony of any witness and in making these suggestions which I have given you as guidelines, I am not attempting to decide that question for you. If you find that any witness has wilfully testified falsely as to any material, that means significant or important matter, you may reject the entire testimony of that witness, or you may accept such

portion of it as you believe and reject the rest.

A few rules apply particularly to this case or a case of this kind: In judging the credibility of any witness, you may consider whether his testimony was inspired by motive of self-interest, personal advantage, so that he gave false or colored testimony and whether the testimony of such a person was a fabrication, perhaps, induced by a belief or a hope or an expectation that he would receive favorable consideration such as not being indicted or charged or imprisoned,as has been suggested here.

As you know, the defendants contend that such motives are true of some of the witnesses here. The Government has pointed out to you why they believe that should not interfere with your accepting the truth of the witness' testimony.

In the prosecution of crime, the Government is often called upon to use witnesses who are accomplices in the commission of the crime itself. This is particularly so in cases of conspiracy. Conspirators do not publicly proclaim their intentions or operate openly under normal circumstances and it often happens that only a member of a conspiracy has the evidence which is relevant to and important to the case.

However, experience has shown that accomplices

may be motivated to place the blame on others than themselves. Accordingly, an accomplice's testimony, and there have been accomplices who have testified here, Mr. Rossi, Mr. Mengrone, Mr. Pearson, should be carefuly scrutinized and checked with the facts which you find to exist in this case, and against the evidence which may corroborate, then you should give the testimony of such accomplice such value or weight as you deem proper under the circumstances.

You should also know that a witness' testimony may be impeached or discredited if he has been convicted of a felony, that is, his conviction is a fact you may take into consideration in determining his credibility.

Ladies and gentlemen, one of the points also made here, of course, has to do with the extent to which Mr. Rossi may or may not receive a prison sentence. I will only say further on that point, that I have told you before and it remains the fact, that that decision will be made by a Judge of this Court. However, it is true and you may take into consideration that the United States Attorney's office is free to bring to the attention of that Judge and it has said it already, the extent of Mr. Rossi's cooperation in this and other cases.

It is, of course, propr for you to consider the interest a witness has in the outcome of the case. That

is true whether it be a Government witness or whether he is a defendant witness as in the case of Mr.DiSalvo. I do not mean to suggest, of course, that a witness who has an interest in the outcome of the case may not be telling the truth in spite of his interest,but I do point out to you that you have a right to consider that fact in determining what weight to give to his testimony.

A final rule as to credibility: There has been testimony here to the previous good character of Mr. DiSalvo. You should consider such evidence of character together with all the other facts and evidence in the case in determining his guilt or innocence here. Evidence of his good character may in itself create a reasonable doubt where without such evidence, no reasonable doubt might have existed.

But if on all the evidence you are satisfied beyond a reasonable doubt that a defendant is guilty, a showing that he previously enjoyed a reputation of good character would not justify or excuse the offense and you should not acquit any defendant merely because you believe he is a person with good repute. The guilt or innocence of every defendant is for you and you alone to determine.

Ladies and gentlemen, as I have said, your determination in this case must be based upon the evidence.

rkb-16

There are two types of evidence of which we normally speak. I am sure you have heard them referred to often. One is called direct evidence, that is, the evidence of an eye witness or an ear witness. I have heard it, such a witness would say, or I have seen it. The other is more indirect generally called circumstantial evidence. That is defined as the proof of a chain of events or circumstances which points itself to the existence or non-existence of facts as to which there was no eye witness. The law makes no distinction as to the importance or weight of circumstantial as distinct from direct evidence. It requires only that you the jury find the facts in accordance with the evidence of the case, both direct and circumstantial, beyond a reasonable doubt, of course.

An example, by the way, of a difference between circumstantial and direct evidence which we often give to jurors, but which is vivid, I think, is as follows:

If you look out the window, not yesterday, but the day before and noticed that it was raining or snowing, that would be direct evidence of the fact. On the other hand, if all the blinds were drawn here as they often have been, and somebody came through the door of the courtroom with a dripping umbrella, that would be pretty good circumstantial evidence that it was raining or snowing out-

rkb-17

side. You wouldn't have seen it with your own eyes but you would have the right to infer seeing a man come from the door with a dripping umbrella that it was raining outside. To be sure, he might have been standing in the shower in one of the rooms of this building that has a shower, but that would be a little unlikely, and the other inference would be the more normal one.

Members of the jury, both the United States Attorney and defense counsel have, from time to time, throughout the course of the trial, objected to the introduction of evidence and addressed arguments to the bench. It is the duty of attorneys on both sides to make such objections when the attorney believes that the other side is proposing to put in evidence or ask questions about something that is not properly admissible. I want you to understand when I have sustained an objection to a question or when I have overruled an objection to a question, that doesn't indicate any attitude of mine as to how this case should be decided. What it means, and the only thing it means, is that if I have sustained an objection or told you to disregard information, you are to disregard the question or the answer, as the case may be, and where I have ruled against a question, not to try and figure out what a witness might have answered if he had been allowed to do so.

BEST COPY AVAILABLE

Now ladies and gentlemen, I have instructed you as to the manner in which you should consider the evidence and since you have heard a very long summary of the respective contentions of the lawyers, I will turn to the substance of the charges against the defendants.

The indictment, as you know, contains a number of counts. I think for the defendants here on trial, we are dealing with Counts 1, Counts 2 through 6 or 7, and Count 11. Each count, as I mentioned before, is a separate crime and each of them must be considered separately by the jury as to each defendant who is named in each count. It is going to be a job, ladies and gentlemen, but of course you will be able to do your work more clearly by approaching it separately with regard to each person also.

This is a good time for me to tell you that to assist you in doing your job, I have prepared what is known as a verdict list for each defendant so when you have reached your conclusion, your forelady can simply fill in the blank of not guilty or guilty as to each charge as to each defendant, and you will have recorded your verdict.

I believe it will help you out.

As you know, the indictment names twelve defendants in all. Only six of whom are on trial here, and the other six need not be of concern to you except that in

BEST COPY AVAILABLE

rkb-19

considering the guilt or innocence of those who are on trial, you may have to determine the nature of the participation, if any, of others who have been named as co-conspirators or defendants. YOu have heard other co-conspirators and defendants named in the course of this trial and to that extent, you may have to consider them.

Having stated these preliminaries, let me come specifically to the charges. There really are two groups of charges. Count 1 constitutes what is known as the conspiracy count. It charges that the defendants conspired to violate the law as to the control of narcotics. All the other counts are what we call substantive counts and they charge one or more defendants, as you will see from the indictment itself, with actually violating the laws relating to the control of narcotic substances on a particular day.

I will deal first with the conspiracy charge both because it comes first and because the discussion may take a little bit longer.

Before you may convict any defendant under the conspiracy charge, you must find that the Government has proven beyond a reasonable doubt all of the following three elements, all of them.

First, you must find the existence of a conspiracy

rkb-20

charged. Obviously nobody can be guilty of belonging to a conspiracy unless there was a conspiracy as charged in the indictment.

Second, you must find that the defendant whose guilt or innocence you are considering at that time knowingly and wilfully joined the conspiracy.

Third, you must find that at least one of the conspirators committed at least one of the so-called overt acts mentioned in the indictment and which I will tell you more about shortly.

If the Government fails to establish any of those essential elements beyond a reasonable doubt as to any defendant, then you must acquit that defendant on Count 1. If it succeeds in proving all of those things as to that defendant, then of course it is your duty to convict that defendant on Count 1.

As I have said, the gist of the crime of conspiracy is an unlawful agreement to violate the law.

Ladies and gentlemen, I get worried sometimes about the instructions which we Judges give about conspiracy, because I think sometimes we instruct you to a fare-thee-well, and I hope I won't do that today. There are a lot of things that it is important for you to know, but what you need to remember as your mooring for the discussion about

rkb-21

conspiracy is that a conspiracy is nothing more nor less than an agreement of two or more people, of course an intentional and knowing agreement to violate the law, and if you bear that in mind, I think all of the other aspects of the instructions will be much clearer to you.

Whether or not the defendant or defendants accomplished what it is alleged that he and the others conspired to do is immaterial to the question of guilt or innocence in regard to a conspiracy charged. A conspiracy need not be successful in order to constitute an illegal act or crime. It is the very conspiracy or agreement itself, together with at least the commission of one overt act that creates the crime.

Since a conspiracy is by definition an agreement between or among people to violate the law, each member, once you are satisfied that somebody became a member of the conspiracy, becomes the agent of every other member.

I want to comment on that point: You may remember that early in the trial and during the course of the trial I have several times explained to you that it was not always possible to put the evidence in any particular order that might be ideal and that some evidence might be put in as to a statement with regard to Defendant X or by Defendant X which might apply to Defendant Y, but that

rkb-22

it could only be applied to Defendant Y if you found on independent evidence against Defendant Y that he, indeed, was a member of the conspiracy.

I want to remind you of that instruction again and I will shortly give you an instruction as to how you are to determine whether a defendant should be adjudged to have been a member of the conspiracy or not.

Coming back now to the nature of the conspiracy itself, to establish the existence of a conspiracy, the Government is not required, of course, to show that two or more people sat around a table and entered into a solemn compact orally or in writing stating that they were forming a conspiracy to violate the law. Common sense makes it clear that when people decide to enter into a criminal conspiracy, they are not going to announce it publicly.

It is sufficient if the Government establishes to your satisfaction beyond a reasonable doubt that two or more people named in this indictment as defendants or as co-conspirators, came to a common understanding to violate the law, in this case, of course, with regard to the control of narcotics. Particular language or specific words aren't required to indicate attachment to a conspiracy, nor is it required that you find that all of the conspirators alleged in the indictment joined the conspiracy in order

to find that the conspiracy existed, but obviously you must find that at least two people did, or you can't have a conspiracy.

The offense of conspiracy is complete when the unlawful agreement is made and any single overt act to effect the object of the conspiracy is thereafter committed by at least one of the conspirators.

Of course, proof that the conspiracy actually has been accomplished may be the most persuasive evidence that the conspiracy actually existed. If you believe that the venture alleged was successful here, the success itself would be very good proof of the existence of a conspiracy.

If upon consideration of the evidence you find beyond a reasonable doubt that the minds of at least two of the alleged co-conspirators met in an understanding and that they agreed to work together in furtherance of the unlawful scheme, then proof of the existence of the conspiracy is complete. That is the first element of the conspiracy.

Now, some of the defendants here have contended that the Government's proof fails to show the existence of the one overall conspiracy which this indictment charges. They argue, of course, that no conspiracy existed, but they further argue that if in fact one did exist, then at

least the evidence shows several separate and independent conspiracies involving various groups of the defendants and not the one single conspiracy charged here in the indictment.

If the Government merely proved several separate conspiracies, that would not constitute the proof required to establish the charge here in the indictment unless one of the several conspiracies which it proved was charged.

In determining whether the conspiracy charged in the indictment existed, you may consider what the evidence shows as to change of personnel and activity and you may consider this in determining whether there are several conspiracies and not the one charged.

You may find a single conspiracy even though there were changes in personnel or activities provided that you find that some of the conspirators continued throughout the life of the conspiracy and that the purpose of the conspiracy continued to be those charged in the indictment.

The fact that the parties are not always identical doesn't necessarily mean there are separate conspiracies. In other words, if at all times the alleged conspiracy had the same overall primary purpose and the same nucleus of participants, the conspiracy would be the same basic scheme even though in the course of its operation,

additional people joined in and performed additional functions to carry out the scheme while others were not active or perhaps had terminated their relationships.

Even if you find that the Government has proven the single overall conspiracy specified in the indictment, you must then determine, and this is the second element, whether any particular defendant on trial before you became a member of that conspiracy knowingly and wilfully in order to find that defendant guilty.

Let's talk about this second element, that is, membership in the conspiracy, individual membership in the conspiracy.

You can't find any of the gentlemen here on trial guilty of Count 1 unless you find that he knowingly and wilfully joined the conspiracy.

Let's be more specific. If you conclude that the conspiracy charged in the indictment existed, you must next determine whether the defendant whose case you are considering participated in the conspiracy with knowledge of its unlawful purpose and in furtherance of its unlawful objectives.

To find his membership in the conspiracy, you must find that he joined it knowingly and he intentionally participated.

Thus, a mere knowledge by any defendant of the

existence of a conspiracy or of any illegal act on the part of another alleged co-conspirator, or mere association with one or more of the co-conspirators, isn't sufficient in itself to establish a conspiracy.

The Government must establish beyond a reasonable doubt that the defendant under question was aware of the basic purpose and objects of the conspiracy, that he entered it with specific intent of violating the law.

(continued on next page.)

bsbr 1

/1 am

Now, whether or not a particular defendant was a member of the conspiracy or joined the conspiracy must be determined, as I have said before, on the evidence as to his own actions and not those of anyone else.

The guilt of a co-conspirator, if you find that there was a conspiracy and he joined it, is not governed by the extent or duration of his paricipation in the conspiracy or whether he had knowledge of all of its operations. Even if one joined the conspiracy after it was formed and was engaged in it to a degree more limited than that of some other co-conspirator, he may still be found guilty of conspiracy.

Each member of the conspiracy may, and often does, perform separate and distinct acts at separate and distinct times from others. Some conspirators obviously play more important roles than others, but it is not required to the proof of the element we have been talking about that a person be a member of the conspiracy from its very start or that he do everything that was done within the conspiracy. He may join it at any point during its existence and then be held responsible for all that has been done before he joined and all that would be done by the conspirators in pursuance of the conspiracy thereafter and while he remains a member.

Thus, if you do find that a given defendant has joined the conspiracy knowingly and wilfully, then, however limited his role in furthering the objectives of the conspiracy, he may be held, and must be held, responsible for all that was done in furtherance before he joined or after he became a member.

Ladies and gentlemen, we come now to the last element with regard to the conspiracy charge, and that is the question of overt acts.

Assuming that you found that the conspiracy existed and that the defendant whose case you are considering was a member of the conspiracy, then the question arises whether any of the co-conspirators committed an overt act as charged in the indictment.

The purpose of requiring proof of an overt act is not inconsequential. It is that while parties may conspire and agree to violate the law they could and they do change their minds and do nothing to carry out that plan -- that is a possibility.

In that case, no crime would be committed. You and I can sit here and even plan to blow up the capitol of the United States and talk about it for days on end, but if we never do anything about it that is not a crime. The moment, however, that one of us does something

bsbr 3

in furtherance of the crime, or the agreement, then the crime of conspiracy is completed.

It is true that overt acts listed in the indictment, generally speaking, don't have to be criminal themselves, although they often are. That does not mean, however, that an action taken may not have sufficient weight to be in furtherance of a crime. If I phone you in connection with our alleged plan to blow up the capitol of the United States and suggest that we meet at a certain time and place, while it may be perfectly normal and not criminal to telephone people, that would be an act in furtherance of the conspiracy.

An overt act need notbe a criminal act, nor the very crime which is the subject of the conspiracy, nor is the government required to prove that each member of the conspiracy committed or participated in any particular overt act, since the act of any one conspirator, done in furtherance of the conspiracy, becomes the act of all other members of the conspiracy.

Moreover, the government is not required to prove each of the overt acts. Indeed, it is sufficient if it proves the commission of only one of the overt acts by one of the co-conspirators.

I am going to furnish you with a copy

of the revised indictment, that is, revised to include only the counts that you are required to consider, and let me read you a few of the overt acts so you know what I am talking about.

For example, overt act No. 1, although it won't apply here because it applies to the case -- of Freddie Blase, who is no longer on trial before you, and it says in or about December, 1971, defendant Freddie Blase met co-conspirator Albert Rossi in New York.

Ordinarily, meeting a person is not a crime, but if you meet somebody in furtherance of the conspiracy then it is a crime. that is what I have been talking to you about.

Ladies and gentlemen, while the indictment before you charges that the conspiracy existed from on or about the first day of January, 1971 through the 30th of December, 1973, it is not essential that the government prove that the conspiracy started and ended precisely on the specified dates. It is sufficient if you find that in fact a conspiracy was formed and existed for sometime within the period set forth within the indictment, and that at least one of the overt acts was committed in furtherance of the conspiracy during that period.

A conspiracy, once formed, is presumed to have continued until its object is accomplished, or until there is an affirmative act of termination by its members, or it is otherwise clearly terminated, as, for example, by arrest of the defendants.

So, too, on the other side of the coin, once a person is found to be a member of a conspiracy, he is presumed to continue his membership until the termination of the conspiracy, unless there is affirmative proof of his withdrawal or his disassociation from it.

Now, ladies and gentlemen, I have finished instructing you with regard to the conspiracy count. We come next to the law with regard to all the remaining counts of the indictment. Those are Counts 2 through 7 and Count 11.

The statute or law passed by Congress, which the defendants are alleged to have violated in regard to those so-called substantive counts is Section 841 of Title 21 of the United States Code, which reads in pertinent part -- that is, the part we are concerned with -- as follows:

It shall be unlawful for any person knowingly or intentionally to distribute or to possess with intention to distribute a controlled substance.

Before you can find any defendant on trial

guilty of the crimes charged in Counts 2 through 7, and Count 11 of the indictment, you must find that the government has proven as to that defendant beyond a reasonable doubt all of the following three elements:

First, that on or about the dates set forth in each count as to that defendant, that defendant distributed or possessed with intention to distribute, a narcotic drug controlled substance;

Second, that he did so unlawfully, wilfully and knowingly; and,

Third, that the substance which he possessed was in fact a narcotic drug controlled substance.

I want to say something a little further about these elements. The first element of the offense is to distribute a drug or to possess it with intent to distribute it.

What do those phrases mean? Well, the word "distribute" means an actual or a constructive or attempted transfer.

The word "possess", has its common everyday meaning, that is, to have something within your control -- it need not necessarily mean to have in your hand or pocket. Control may be demonstrated by the existence of a working relationship between the person having

bsbr 7

the control and the person who has actual physical custody.

The word "intent," of course, refers to a person's state of mind.

So putting it all together, the term "possess with intent to distribute," means to control an item with the purpose of transferring it.

If you find beyond a reasonable doubt that a defendant actually made a transfer of a narcotic drug controlled substance that finding would, of course, satisfy this requirement of the crime. Moreover, if the proof shows that a defendant merely possessed a narcotic drug controlled substance, but possessed it with the intent to distribute it, that that finding would also satisfy the requirements of this element of the offense.

In this respect, I direct your attention to Count 11, which, when you come to it, you will find charges only possession with intention to distribute and not actual distribution.

The second element of the offense charges, of course, and not surprisingly, that a defendant cannot be found guilty unless you find that his distribution or his possession with intention to distribute was an unlawful and wilful and knowing possession. Those words mean that you must be satisfied beyond a reasonable

doubt that the defendant in question knew what he was doing; he did it deliberately and voluntarily and not mistakenly or accidently or as a result of some coercion.

For example, if you sold somebody some packets of what you thought were granulated sugar and they turned out to be cocaine or heroin, you obviously would not be guilty of a crime even though you would literally have distributed a narcotic drug controlled substance.

Of course, it is not necessary that a defendant knew thathe was violating any particular law. It is sufficient if you are convinced beyond a reasonable doubt that he was aware of the general unlawful nature of his acts.

As to the third element, the substantive count charged that the narcotic drug controlled substance in this case was either heroin or cocaine. I instruct you as a matter of law that heroin and cocaine are narcotic drug controlled substances. You, however, must still find beyond a reasonable doubt that the substance in question in the counts charged was either heroin or cocaine.

While you must be convinced beyond a reasonable doubt that the substance posssessed or distributed was in fact a narcotic drug controlled substance, it is not necessary that this be proved by direct evidence. Just as

bsbr 9

with any other component of a crime, the existence of and dealing in narcotics may be proved by circumstantial evidence. There need not be a sample placed before you, although there have been some samples placed before you in this case, nor need there be testimony by a qualified chemist, as long as the evidence furnishes grounds for inferring that the material in question is narcotics.

There are several categories of circumstantial evidence which you may consider in determining whether a given defendant has possessed a narcotic drug, as charged in the substantive counts.

For example, testimony that someone had personally tested samples of the powder from each shipment, or, the secrecy and deviousness with which the transactions were handled; as, for example, code words, if you find that they were used, or concealment of the substance, and so on, or the fact that a substance in which a defendant was dealing with a white powder, since heroin and cocaine -- I will take judicial notice of the fact -- are white powders, normally; or the high price paid in cash for the substance; or the lack of complaint on the part of the purchasers; or, finally, tha the white powder in evidence, which the -- here it was agreed it was identified by a United States Chemist, or would have been identified by him if he had

bsbr 10

testified, as heroin hydrochloride.

There is another way, another basis beyond what I have described, upon which you may find a defendant guilty even though he didn't literally commit the act himself. This refers, of course, only to those substantive counts in which more than one defendant has been named. You will understand in a moment. Any person -- I am now telling you what the law is -- who commits an act in violation of criminal statute or law passed by Congress, of course, commits a crime. But it is also a crime not only to commit the illegal act yourself, but to aid or abet someone else to commit a crime.

Accordingly, if you should find beyond a reasonable doubt that any of the defendants named in the substantive count, or any of their co-conspirators, committed the crime charged, and that another defendant aided or abetted that defendant, you would have a sufficient basis for finding the guilt of the second person as to the substantive count in which he is charged.

What does it mean to aid and abet? To find that a defendant aided or abetted another to commit a crime you must find that the allegedly aiding and abetting defendant in some positive, clear way associated himself with the crime; that he participated in it not just casually

bsbr 11

but as something he really wished to bring about.

In other words, you must find that he sought by his actions to make the venture succeed.

Thus, in order to find a defendant guilty of aiding and abetting someone else, you must, of course, find something much more than mere knowledge on his part that a crime was being committed, for a mere spectator at a crime is not a participant. However unfortunate this conduct may be, if you stood watching someone else hold up a third person with a gun, you may not be by that alone aiding and abetting that man. In order to convict it is not necessary, however, that you find that the defendant himself did the acts.

Ladies and gentlemen, in every criminal case there is a fundamental rule which every defendant has the right to rely on. That is the rule that the defendant may not be compelled to take the witness stand or offer any testimony at all. Pleading not guilty a defendant has in effect denied every material issue against him stated in the indictment. It is the prosecution which must prove him guilty, as I have stated, and he cannot be required to testify or to disprove anything.

Any accused person has a right to stand mute. The fact that he does not take the stand, as the

bsbr 12

defendnats in this case, with the exception of defendant DiSalvo, have not, may not be considered by any of you as any indication of guilt as to them, or any admission on their part, or an inference of guilt.

That is just not an artificial rule. If you were accused of crime you would feel there is no reason for you to prove yourself innocent. However thoroughly you would be convinced of your innocence, or knew of it, you would understand that it is the government's job to prove you guilty, if it could.

Ladies and gentlemen, I have come nearly to the end of my formal instructions, but in a sense the most important part of what I have to say is coming now. That is with regard to your role as jurors, because it is for you and you alone to decide whether any of the defendants on trial is guilty on any of the counts charged.

I know thatyou will try the issues that have been presented to you in accordance with the serious oath that you took as jurors in which you promised that you would well and truly try the issues joined in this case, and as you probably remember it from my repeating it time after time when I was impaneling the jury, based solely on the evidence which you have had put before you in this trial, and the instructions as to the law which I am now giving

bsbr 13

you, render a true and just verdict.

I like that phrase "well and truly try the issues joined in this case." It goes back a thousand years and its old fashioned flavor should mean something to you and remind you of the hundreds of thousands of juries who have performed this function before you and that you must a true verdict render based upon the evidence you have heard in this court and the exhibits.

In order for you to reach a verdict, either not guilty or guilty, as to any defendant on any count, your verdict must, of course, be unanimous; that is, everybody must agree on that particular verdict. In spite of the requirement of unanimity, each of you must decide each count as to each defendant individually, in accordance with yourown conscience, but only after deliberation with your fellow jurors to determine whether you believe a just verdict is being reached.

You should not hesitate to change your mind if you become convinced that your original view of the case did not accord with the facts or the law or whatever it is; on the other hand, you should not change your view just for the purpose of reaching a verdict as a matter of convenience.

I really have not any reason to believe that

this jury won't be able to reach a unanimous verdict one way or the other as to the matters put before it.

To sum up, if you find that there is a reasonable doubt that the law has been violated as to any defendant on any count, you should not hesitate for any reason to acquit that defendant on that count. On the other hand, if you find that the law has been violated and the government has proven it beyond a reasonable doubt as charged, you should not hesitate, because of sympathy or for any other reason, to render a verdict of guilt as to that defendant on that count.

Nothing I have said in these instructions -- and I stress this -- is intended to indicate any view of mine towards how the various issues put before you should be decided.

Ladies and gentlemen, according to custom, Juror No. 1 normally acts as foreman of the jury in this court, and I am going to ask Mrs. Frackel to do so in this case. That does not mean that she will have any authority that the rest of you don't have, but simply that she will assist in seeing to it that your deliberations are orderly and that all communications to the Court are properly made.

You will remember that you have the right at

any time, ladies and gentlemen, to ask for the exhibits, or any one of them; you have the right to have any of the testimony read to you or any of the tape exhibits played to you; you have the right to put any questions that you want to the Court.

If you do wish to have any testimony read back to you, or any exhibit, it will be very helpful if you will be as specific as possible about the material that you are interested in so that we can be assisted in locating that material in advance.

Of course, the way you get in touch with the Court will be to give a note to the marshal who will be standing outside the door of your juryroom. I am neither encouraging or discouraging your asking for anything, but certainly you have the right to have anything you wish.

It is not my practice, ladies and gentlemen, to send in all the exhibits, plunk them down on the jury room table and leave them there. However, if you prefer, when you start your deliberations, to have all the exhibits before you, all you have to do is write a note saying so. If, on the othr hand, you just want a particular exhibit, you can ask for that.

I will also say, because sometimes a jury

bsbr 16

asks, that the Judge's charge will not be sent into you. I hope it has been clear, but if it has not been clear then I am afraid it would be less clear if I sent it in to you and you all tried by yourselves to figure out what it meant.

If you do have any questions about what my charge is, or what the law is, simply write me a note saying that you have a question and come on out and tell me what your question is, or specify the question in your note, and it will be answered.

Ladies and gentlemen, I have now come to the end of my instructions. I will meet briefly with counsel in the robing room to see whether they think anything needs to be clarified, and we will return to you in a few minutes and you will then begin to deliberate the case.

Will you please wait in the jury box while we discuss the matter.

(In the robing room.)

THE COURT: Mr. Amorosa?

MR. AMOROSA: Judge, from our point of view there is one thing that we would like your Honor to charge, and I don't believe that you said it to the jury, although the conspiracy charge was excellent.

That was that to find the defendants guilty the

* * * * *

BEST COPY AVAILABLE